

October 4, 2018

Webb & Webb 2028 E. Ben White Blvd Austin, TX 78741

Mr. Stephen Webb:

The City has approved the execution of a contract with your company for Hearing Officer Services in accordance with the referenced solicitation.

Despensible Department:	Einangial Consisce Department
Responsible Department:	Financial Services Department-
	Purchasing Office
Department Contact Person:	Yolanda Miller
Department Contact Email Address:	Yolanda.Miller@austintexas.gov
Department Contact Telephone:	(512) 974-2033
Responsible Department:	Department of Small & Minority
	Business Resource (SMBR)
Department Contact Person:	Edward Campos
Department Contact Email Address:	Edward.campos@austintexas.gov
Department Contact Telephone:	(512) 974-7206
Responsible Department:	Financial Services Department-Capital
,	Contracting Office (CCO)
Department Contact Person:	Aiden Cohen
Department Contact Email Address:	Aiden.cohen@austintexas.gov
Department Contact Telephone:	(512) 974-1929
Responsible Department:	Neighborhood Housing & Community
	Development (NHCD)
Department Contact Person:	Alan Fish
Department Contact Email Address:	Alan.Fish@austintexas.gov
Department Contact Telephone:	(512) 974-1054

Contractor Name:	Webb & Webb
Contract Number:	7400-PA180000085
Contract Period:	Initial term of two years
Dollar Amount	\$70,000 (\$35,000 each year) to be shared between both Contractors
Extension Options:	Three, 12-month extension options ea at \$35,000
Requisition Number:	17101800041
Solicitation Type & Number:	RFQS 7400-CRR0305

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Claudia Rodriquez

Procurement Specialist IV

City of Austin

Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN ("City") AND Webb & Webb ("Contractor")

Webb & Webb ("Contractor" for

Hearing Officer Services Contract Number MA 7400-PA180000085

The City accepts the Contractor's Offer (as referenced below) for the above requirement and enters into the following Contract.

This Contract is between Webb & Webb having offices at 2028 E. Ben White Blvd. Austin, TX 78741 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number 7400-CRR0305.

- 1.1 This Contract is composed of the following documents:
 - 1.1.1 This Contract
 - 1.1.2 Exhibit A-The City's Solicitation, Request for Qualifications (RFQS), 7400-CRR0305 including all documents incorporated by reference
 - 1.1.3 Exhibit B-Webb & Webb's Response to RFQS 7400-CRR0305, including all subsequent clarifications
 - 1.1.4 Exhibit C-Webb & Webb's Pricing Offer, dated September 5, 2018, including subsequent clarifications
- 1.2 <u>Order of Precedence</u>. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This Contract
 - 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
 - 1.2.3 The Contractor's Response as referenced in Section 1.1.3, including subsequent clarifications.
 - 1.2.4 The Contractor's Pricing Offer as referenced in Section 1.1.4, including subsequent clarifications.

1.3 Term of Contract.

1.3.1 The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 24 months.

Webb & Webb Contract

- 1.3.2 The Contract may be extended automatically beyond the initial term for up to three additional 12-month periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.
 - 1.3.2.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
 - 1.3.2.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).
 - 1.3.2.3 This is a 24-month Contract. Prices are firm for the first twelve (12) months.

1.4 Compensation.

- 1.4.1 The Contractor shall charge \$3,750 per hearing (maximum of 15 hours), per Exhibit C, Price Proposal.
- 1.4.2 The Contractor shall charge \$250 per hour for hearings exceeding the 15 hours, and for Equal Opportunity related hearings, per Exhibit C, Price Proposal.
- 1.4.3 The Contractors shall be paid a total Not-to-Exceed amount of \$70,000, to be shared between both Contractors, for the initial Contract term of 24 months and \$35,000 for each extension option. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.
- 1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

Webb & Webb Contract 2

WEBB & WEBB

CITY OF AUSTIN

010	Puen 1	1 (CCV)
Printed Nam	e of Auth	orized Person
1	11 1	DIONATE
	H KLY10	a Y XIIONAT

240-10. 12 Wolds

Signature /DIDNON/

Title:

October 4, 2018

Date:

Claudia Rodriquez

Printed Name of Authorized Person

Procurement Specialist IV

Title:

October 8.2018

Date:

Exhibit A- The City's Solicitation, Request for Qualifications (RFQS), 7400-CRR0305

Exhibit B- Webb & Webb's Response to RFQS 7400-CRR0305

Exhibit C- Webb & Webb's Pricing Offer, dated September 5, 2018, including subsequent clarifications

QUALIFICATION STATEMENTS OF STEPHEN P. WEBB AND GWENDOLYN HILL WEBB OF WEBB & WEBB, ATTORNEYS AT LAW

REQUEST FOR QUALIFICATION STATEMENTS (RFQS) SOLICITATION NO.: 7400-CRR0305 SERVICE DESCRIPTION: HEARING OFFICERS

Stephen P. Webb, attorney and partner at Webb & Webb, Attorneys at Law ("Webb & Webb") is pleased to submit the following proposal in response to Request for Qualification Statements ("RFQS") for the City of Austin ("City" or "Austin") to provide Hearing Officer services. This Qualification Statements of Stephen P. Webb and Gwendolyn Hill Webb, of Webb & Webb, Attorneys at Law ("Statement") follow the format of the RFQS. The items included as attachments are responsive to the information requested in the RFQS.

TABLE OF CONTENTS

Executive Summary	3
Гаь 1	
Tab 2	
Tab 3	
Tab 4	
Tab 5	
Tab 6	18
Statement of Qualifications and Related Project Experience of Stephen P. Webb and Gwendol Hill Webb from 2003 Forward	yn 24

EXECUTIVE SUMMARY

Stephen P. Webb ("Stephen Webb" or "Mr. Webb") and Gwendolyn Hill Webb ("Gwen Webb" or "Ms. Webb") are experienced attorneys and independent hearing officers who are familiar with the expectations of the City of Austin in the handling of matters that require an administrative hearing and a written decision. The City's responsibilities as an independent hearing officer are similar to Gwen Webb and Stephen Webb's duties as a Special Education Hearing Officer on behalf of the State of Texas. Those positions had been maintained pursuant to multiple contracts with the Texas Education Agency from 1995 through 2013. Mr. Webb's decisions have been upheld by several decisions of U.S. district courts, the U.S. Court of Appeals, Fifth Circuit, and one decision by the United States Supreme Court. Stephen Webb has been providing independent hearing officer services to the City of Austin for over 17 years and would like to continue to do so. At present, Stephen Webb and Gwen Webb are under contract to provide independent hearing officer services to the City of Austin/Austin Energy.

Stephen P. Webb and Gwen Webb have the qualifications, experience and expertise needed to provide administrative hearings in the designated City of Austin program areas, including, the Purchasing Office, AHFC, Capital Contracting Office ("CCO"), and the Small and Minority Business Resources Department ("SMBR"). Stephen P. Webb has significant experience in considering bid protests and procurement compliance with these departments, and Gwen Webb has significant experience in working as an independent hearing officer and mediator resolving disputes under specialized government programs. Additionally, both Stephen P. Webb and Gwen Webb now serve as independent hearing officers for Austin Energy, considering matters of Austin Energy and Austin Water utility billing appeals, City of Austin Code Compliance, commercial and residential security alarm service operation and penalties, and animal control regarding dangerous and vicious dogs. Additionally, Stephen P. Webb and Gwen Webb have both acted as hearings examiners for State agencies, have trained and managed hearing examiners, and have participated in contested case hearings starting from when they were first licensed to practice law in 1979, well before the 2003 date the RFQS references. Moreover, as attorneys in a successful private practice since 1991, Mr. Webb and Ms. Webb have also been involved in legal and policy analysis and in writing legal memoranda, reports, briefs, decisions, appeals, and position statements throughout their careers.

Stephen P. Webb and Gwendolyn Hill Webb meet the minimum qualifications of the RFQS as set out below.

Required experience demonstrated through a resume, letters of reference, certifications and education/training transcripts

Resumes: The resumes of Stephen P. Webb and Gwendolyn Hill Webb; Casey Powell, Paralegal and Office Manager, and Sierra Herrera, Legal Assistant are attached to this RFQS behind Tab 5.

Letters of Reference: Webb & Webb has been hired by the City of Austin under multiple contracts in response to recommendations from City of Austin staff, attached to this RFQS behind Tab 5.

Education/Training transcripts: Shown on their resumes, both Stephen P. Webb and Gwendolyn Hill Webb served as trainers and supervisors of hearings examiners for the State of Texas. Mr. Webb trained and supervised hearings examiners at the Railroad Commission of Texas; Gwen Webb trained and supervised hearings examiners at the Texas Water Commission.

Both Stephen P. Webb and Gwen Webb have been determined to be AV preeminent lawyers by their peers in the legal profession, including fellow lawyers and the judiciary. Their recognitions by Martindale Hubble are attached to this RFQS behind Tab 5.

Additionally, Webb & Webb attorneys meet the specific legal requirements for this RFQS as set out below:

Active license to practice law and five years licensure:

Stephen P. Webb is an attorney licensed to practice law in the State of Texas, State Bar Card No. 21033800. A photocopy of his bar card and letter of good standing is attached to this RFQS behind Tab 5.

Gwen Webb is an attorney licensed to practice law in the State of Texas, State Bar Card No. 21026300. A photocopy of her bar card and letter of good standing is attached to this RFQS behind Tab 5.

Mediator who attended a 40-hour mediation class and performed 25 mediations in the last five years:

Gwen Webb is a certified mediator who has attended the 40-hour mediation class and the 30-hour advanced mediation class for family and divorce mediation. Her certificates are attached to this RFQS behind Tab 5.

<u>Procurement professional with experience in conducting actual administrative grievance hearings with the previous five years:</u>

Stephen P. Webb has experience conducting hearings regarding bid protests, Anti-Lobbying Ordinance compliance, M/WBE Ordinance compliance, and other procurement disputes for the City of Austin for over 20 years.

For the AHFC hearing officer, knowledge of Texas Housing Finance Corporation Act and other AHFC-related rules and policies: and

To date, neither Stephen P. Webb nor Gwen Webb has worked with the Texas Housing Finance Corporation Act or other AHFC-related rules and policies. Both Stephen P. Webb and Gwen Webb believe, however, that training and study would allow them to assist AHFC, just as they have applied their thorough knowledge of administrative law to provide hearing officer services under new government programs in the past.

For the fair housing hearing officer, knowledge of both municipal and federal fair housing laws for fair housing hearings.

Webb & Webb does not have extensive experience in fair housing cases. However, Gwen Webb is now representing a client before the Texas Workforce Commission, Civil Rights Division in a Fair Housing Complaint under the Federal Fair Housing Act as administered in the State of Texas under the Texas Fair Housing Act. Gwen Webb also represented Anderson Community Development Corporation from 1995 through 1999. Webb & Webb feels very strongly that citizens should be able to turn to their government for practical and impartial assistance in Fair Housing Act complaints.

Therefore, Webb & Webb, and its individual attorneys, Stephen P. Webb and Gwen Webb have a wealth of experience to apply to the duties and responsibilities of performance under this RFQS. They have the ability to manage and implement hearing officer programs under a wide variety of State of Texas and Federal government programs. Webb & Webb would be honored to be selected as Hearing Officers for the City of Austin under this RFQS.

QUALIFICATION STATEMENTS OF ATTORNEYS

STEPHEN P. WEBB AND

GWENDOLYN HILL WEBB OF

WEBB & WEBB, ATTORNEYS AT LAW

TAB 1-CITY REQUIRED DOCUMENTS

TAB 1 - CITY REQUIRED DOCUMENTS

On behalf of Webb & Webb, Attorneys at Law ("Webb & Webb"), Stephen P. Webb, Attorney/Owner and authorized representative, presents the following City Required Documents as required by this RFQS:

- 1. Offer Sheet signed by Stephen P. Webb, authorized representative for Webb & Webb, Attorneys at Law.
- 2. This entire document, Tabs 1 6, inclusive, constitutes the Qualification Statements of Stephen P. Webb and Gwendolyn Hill Webb, of Webb & Webb, Attorneys at Law including the following Writing Samples:
 - a. Decision of the Independent Hearing Officer, as a writing sample for Stephen P. Webb;
 - b. Decision of the Independent Hearing Officer, as a writing sample for Gwendolyn Hill Webb.

Both Writing Samples are included behind Tab 4 – Writing Sample.

- 3. Section 0700: Reference Sheet for Webb & Webb attorneys:
 - a. Stephen P. Webb; and
 - b. Gwendolyn Hill Webb.
- 4. City of Austin, Texas Section 0800 Non-Discrimination and Non-Retaliation Certification signed by Webb & Webb authorized representative, Stephen P. Webb.
- 5. Section 0815: Living Wages Contractor Certification signed by Webb & Webb authorized representative, Stephen P. Webb.
- 6. Acknowledgement that Section 0900: Minority-and Women-Owned Business Enterprise (MBE/WBE) Procurement Program Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form was removed from this RFQS per Addendum No. 2.
- 7. Acknowledgement that Section 0905: Minority-and Women-Owned Business Enterprise (MBE/WBE) Procurement Program Subcontracting/Sub-Consulting Utilization Plan was removed from this RFQS per Addendum No. 2.
- 8. Attachment A: Exceptions Document, accepting the RFQS as submitted signed by Webb & Webb authorized representative, Stephen P. Webb.

Also attached please find authorized representative,		No. 2;	both signed	d by	Webb &	Webb
					·	
	/					

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: _	Webb & Webb, Attorneys at Law
Company Address:	2028 E. Ben White Boulevard, Suite 425
City, State, Zip:	Austin, Texas 78741
Federal Tax ID No.	
Printed Name of Office Representative:	cer or Authorized Stephen P. Webb
Title: Attorney/I	Partner
Signature of Officer of Representative:	or Authorized
Date: February	12, 2018
Email Address: S.I	o.webb@webbwebblaw.com
Phone Number: 5	12-472-9990

* Qualifications Statement must be submitted with this signed Offer sheet to be considered for award

Section 0700: Reference Sheet

Responding Company Name	Webb & Webb, Attorneys at Law	

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1.	Company's Name	City of Austin/Austin Energy
	Name and Title of Contact	Doug Jansky, Administrative Hearing Coordinator- Legal Division
	Project Name	Hearing Officer Services- Austin Energy
	Present Address	1520 Rutherford Lane, Building 1
	City, State, Zip Code	Austin, Texas 78756
	Telephone Number	(<u>512</u>) 974-8547 Fax Number (<u>)</u>
	Email Address	douglas.jansky@austintexas.gov
2.	Company's Name	City of Austin
	Name and Title of Contact	James Scarboro, Purchasing Officer
	Project Name	Protest Hearing Officer Services
	Present Address	124 W. 8th Street
	City, State, Zip Code	Austin, Texas 78701
	Telephone Number	(<u>512</u>) <u>974-3491</u> Fax Number ()
	Email Address	james.scarboro@austintexas.gov
		,
3.	Company's Name	Randle Law Office
	Name and Title of Contact	Mr. Grady Randle, Attorney
	Project Name	Counsel for Mont Belvieu, Texas
	Present Address	820 Gessner Road, Suite 1570
	City, State, Zip Code	Houston, Texas 77024
	Telephone Number	(281) 657-2000 Fax Number ()
	Email Address	grady@jgradyrandlepc.com

Section 0700: Reference Sheet

Responding Company Name Webb & Webb, Attorneys at Law

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

١.	Company's Name	City of Dallas-Dallas Water Utilities
	Name and Title of Contact Project Name	Mr. Denis Qualls, P.E., D WRE., Senior Program Manager, Planning City of Dallas Water Rights Regulatory Attorney; and Dallas Water Utilities Department Long Range Water Supply Plan
	Project Name	
	Present Address	1500 Marilla Street, 4AS
	City, State, Zip Code	Dallas, Texas 75201
	Telephone Number	(214) 670-3843 Fax Number (214) 670-1240
	Email Address	denis.qualls@dallascityhall.com
2.	Company's Name	City of Dallas
	Name and Title of Contact	Ms. Jo. M. Puckett, P.E., Assistant City Manager (Interim) and Former Director, Dallas Water Utilities
	Project Name	City of Dallas Water Rights Regulatory Attorney; and Dallas Water Utilities Department Long Range Water Supply Plan
	Present Address	1500 Marilla Street, 4DN
	City, State, Zip Code	Dallas, Texas 75201
	Telephone Number	(<u>214</u>)670-1204 Fax Number (<u>214</u>)670-3154
	Email Address	jo.puckett@dallascityhall.com
3.	Company's Name	City of Dallas-Dallas Water Utilities
	Name and Title of Contact	Ms. Terry Lowery, Director (Interim) City of Dallas Water Rights Regulatory Attorney; and
	Project Name	Dallas Wafer Utilities Department Long Range Water Supply Plan
	Present Address	1500 Marilla Street, 4AS
	City, State, Zip Code	Dallas, Texas 75201
	Telephone Number	(<u>214) 670-3843</u> Fax Number (<u>214) 670-1240</u>
	Email Address	terry.lowery@dallascityhall.com

City of Austin, Texas Section 0800 NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below. and agrees;

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this	12	day of _	February	2018	
				CONTRACTOR Authorized Signature	
				Title	Attorney Partner

Section 0815: Living Wages Contractor Certification

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$14.00 per hour.

(1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$14.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title
Casey Powell	Webb & Webb	Prime	\$24.04	Paralegal
Sierra Herrera	Webb & Webb	Prime	\$20.19	Paralegal

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$14.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$14.00 per hour.

Contractor's Name:	Webb & Webb, Attorneys at Law
Signature of Officer of Authorized Representative:	Date: February 12, 2018
Printed Name:	Stephen P Webb
Title	Attorney/Partner

ATTACHMENT A



CITY OF AUSTIN PURCHASING OFFICE EXCEPTIONS

Solicitation Number: RFQS 7400-CRR0305

The City will presume that the Respondent is in agreement with all sections of the solicitation unless the Respondent takes specific exception as indicated below. The City, at its sole discretion, may negotiate exceptions to the sections contained in the solicitation documents or the City may deem the Respondent non-responsive. The Respondent that is awarded the contract shall sign the contract with the accepted or negotiated sections.

Place this attachment in Tab 7 – Exceptions. Copies of this form may be utilized if additional pages are needed.

 X Accepted as written.		☐ Not accepted as written. See below:			
Indicate: 0300 Standard Purchase Terms & Conditions 0400 Supplemental Purchase Provisions 0500 Scope of Work					
Page Number	Section Number	Section Description			
Alternative Language:	1	,			
Justification:					
		Harris P. Wall	Market		
		2/13/2018			



ADDENDUM PURCHASING OFFICE CITY OF AUSTIN, TEXAS

Solicitation: 7400-CRR0305 Addendum No: 1 Date of Addendum: 02/01/2018

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Clarifications:

- I.1 Replace <u>Supplemental Purchase Provisions</u>, <u>Section 0400</u>, with the attached.
- I.2 Replace Qualification Statement Preparation Response Instructions, Section 0600, with the attached.

II. Questions:

II.1 If we are awarded a contract do we obtain the required insurance at that point?

Answer: Yes, that is correct. You are not required to submit insurance with the response.

II.2 Why are there now requirements for the MBE/WBE program in this solicitation?

Answer: This solicitation is under the City Manager's signature authority, so per the City Ordinance the MBE/WBE program is not applicable. All respondents should complete the Section 0900, but if you do plan to sub-contract out any portion of the contract please complete the Section 0900 and contact SMBR for guidance on the process to complete the Section 0905.

II.3 As a City Certified Minority or Woman Owned Business how can we ensure that our contact information is available to Prime vendors that plan to sub-contract out any of the scope of work?

Answer: You can email your information to the authorized point of contact, Claudia Rodriquez. If a Prime vendor requests contact information for subcontractors available for this project we will provide your contact information to those vendors. We will also check to ensure your company is listed under the correct commodity codes.

II.4 In a previous solicitation we were not required to provide a project management structure as requested in Section 0600. As a sole-proprietor how should we respond to this section?

Answer: As a sole-proprietor you are still required to provide a response to this section. Please provide your organizational structure and your organization's capabilities to meet the City's requirements as listed in this section.

II.5 What is the fee structure for this solicitation?

Answer: You are not required to provide a fee structure or pricing for this phase of the solicitation. As Contractors are selected to be the most qualified, they will be contacted for their pricing structure and a full scope of work to be negotiated.

- How much work is anticipated for the contract?
 Answer: See Section 1.B of the Scope of Work. The City anticipates having 11 hearings in a 12-month period. The City reserves the right to order more or less of the services being solicited.
- III. Additional Information: Please see the attached additional information.
 - III.1 Pre-Response Meeting Attendance Log
 - III.2 MBE/WBE Procurement Program Solicitation Overview/Resource Guide
- IV. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

Claudia Rodriquez, Procurement Specialist IV

Purchasing Office, (512) 974-2959

02/01/18

Date

ACKNOWLEDGED BY:

Authorized Signature

Feb. 12, 2018

Date

<u>RETURN ONE COPY OF THIS ADDENDUM</u> TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICIATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



ADDENDUM PURCHASING OFFICE CITY OF AUSTIN, TEXAS

Solicitation: 7400-CRR0305 Addendum No: 2 Date of Addendum: 02/06/2018

This addendum is to incorporate the following changes to the above referenced solicitation:

I. <u>Clarifications:</u>

- I.1 Remove Section 0900-Minority and Women Owned Business Enterprise Procurement Program, Utilization Form. No response required on this form.
- 1.2 Remove Section 0905- Minority and Women Owned Business Enterprise Procurement Program, Utilization Plan. No response required on this form.
- II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY Laudea Loduguez
Claudia Rodriquez, Procurement Specialist IV

Purchasing Office, (512) 974-2959

<u>02/04/2018</u> Date

ACKNOWLEDGED BY:

lomo

Feb. 12, 2018

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICIATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

TAB 2AUTHORIZED NEGOTIATOR AND BUSINESS ORGANIZATION

TAB 2 – AUTHORIZED NEGOTIATOR AND BUSINESS ORGANIZATION

Stephen P. Webb, Attorney/Owner person of Webb & Webb, Attorneys at Law ("Webb &

Webb") who is authorized to negotiate contract terms and rending binding decisions on contract

matters. Stephen P. Webb's name, address, telephone number and other contract information is as

follows:

Stephen P. Webb

Webb & Webb, Attorneys at Law

2028 E. Ben White Boulevard, Suite 425

Austin Texas 78741

Telephone: 512-472-9990

Fax:

512-472-3183

Email address: s.p.webb@webbwebblaw.com

Webb & Webb is not a subsidiary of any other company, and has no parent company. Further, Webb

& Webb's only location is at 2028 E. Ben White Boulevard, Suite 425, Austin, Texas 78741. Webb &

Webb of Austin, Texas will perform all work required in this RFQS.

Webb & Webb, Attorneys at Law, is a law firm partnership which was founded in February,

1991, and a general partnership authorized to do business in the State of Texas. Webb & Webb is

owned by Stephen P. Webb ("Mr. Webb") and Gwendolyn Hill Webb ("Gwen Webb," or "Ms.

Webb"). Mr. and Ms. Webb, the founding partners, are both AV Rated attorneys by their attorney

peers and the judiciary. Stephen P. Webb (State Bar No. 21033800) and Gwen Webb (State Bar No.

21026300) are both in good standing with the Texas State Bar and have been in good standing since

they became licensed to practice law in 1979.

The name, address, telephone numbers and contact information of each of the Webb & Webb

partners and owners is set out below:

WEBB & WEBB, ATTORNEYS AT LAW

2028 E. Ben White Blvd. Suite 425

Austin, Texas 78741

Telephone: (512) 472-9990

Fax:

(512) 472-3183

STEPHEN P. WEBB, ATTORNEY/PARTNER

State Bar No.: 21033800

Email: s.p.webb@webblaw.com

GWENDOLYN WEBB, ATTORNEY/PARTNER State Bar No.: 21026300

Email: g.hill.webb@webbwebblaw.com

TAB 3-PROJECT APPROACH

TAB 3 – PROJECT APPROACH

In preparing for, conducting, and issuing any decision and/or revised decision of the hearing officer, Stephen P. Webb and Gwendolyn Hill Webb will comply with all applicable rules and regulation of Federal, State and Local governing entities. Both Stephen P. Webb and Gwen Webb have years of experience as hearing officers for state agencies, Independent Hearing Officers for the City of Austin (both Purchasing and Austin Energy) and other entities, and as Special Education Hearing Officers under contract with the Texas Education Agency. Moreover, both Stephen P. Webb and Gwen Webb have represented cities and the State of Texas in multi-party contested case hearings and rulemaking before the old Civil Aeronautics Board, the Railroad Commission of Texas, and the Texas Commission on Environmental Quality, and predecessor environmental agencies; Stephen P. Webb and Gwen Webb have prosecuted successful appeals before the Travis County District Court throughout their entire legal careers. They have supervised and trained hearing examiners, hearing officers and administrative and legal support staff in legal procedures applicable to hearings and docket management, file organization, and case closure.

Further, as outlined in the *Scope of Work, Section IV. Scope of Services*, Stephen P. Webb and Gwendolyn Hill Webb have both reviewed each requirement and acknowledge:

- A. Stephen P. Webb will attend the City's required Hearing Officer training; Gwen Webb will attend the City's required Hearing Officer training;
- B. Stephen P. Webb is regularly available during normal business hours Monday through Friday and will comply with all grievance deadlines;

 Gwen Webb is regularly available during normal business hours Monday through Friday and will comply with all grievance deadlines;
- C. Stephen P. Webb will travel to any City facility where a hearing may be held; Gwen Webb will travel to any City facility where a hearing may be held;
- D. Stephen P. Webb will produce a written reports in the most current version of Microsoft Word, which summarizes the available information, make finding of fact and, upon request, make a recommendation to uphold, overturn or modify the response to the protest consistent the City's policy;
 - Gwen Webb will produce a written reports in the most current version of Microsoft Word, which summarizes the available information, make finding of fact and, upon request, make a

- recommendation to uphold, overturn or modify the response to the protest consistent the City's policy;
- E. Stephen P. Webb will accept all hearing assignments within one (1) business day of being notified by authorized users of the contract. Stephen P. Webb will accept via email to the City. If Stephen P. Webb is unavailable for the specified hearing date, Stephen P. Webb will notify the requestor in writing within one (1) business day of the City's request for services; Gwen Webb will accept all hearing assignments within one (1) business day of being notified by authorized users of the contract. Gwen Webb will accept via email to the City. If Gwen Webb is unavailable for the specified hearing date, Stephen P. Webb will notify the requestor in writing within one (1) business day of the of the City's request for services;
- F. Stephen P. Webb will prepare for each hearing and attend any necessary pre-hearing determinations. Stephen P. Webb understands that the City will provide information pertaining to the protest as soon as practical;

 Gwen Webb will prepare for each hearing and attend any necessary pre-hearing determinations. Gwen Webb understands that the City will provide information pertaining to the protest as soon as practical;
- G. Stephen P. Webb will conduct hearings in a manner consistent with the guidelines negotiated by each requesting business unit;

 Gwen Webb will conduct hearings in a manner consistent with the guidelines negotiated by each requesting business unit;
- H. Stephen P. Webb will produce a written, fact-finding report that conforms to the format required by the requesting business unit that is free of errors and irrelevant opinions. Stephen P. Webb understands that the information on the required document format will be provided at the City provided Hearing officer training;

 Gwen Webb will produce a written, fact-finding report that conforms to the format required by the requesting business unit that is free of errors and irrelevant opinions. Gwen Webb understands that the information on the required document format will be provided at the City provided Hearing officer training;
- I. Stephen P. Webb will complete and deliver the report and executive summary electronically to the requestor that is free of errors and irrelevant opinions;
 Gwen Webb will complete and deliver the report and executive summary electronically to the requestor that is free of errors and irrelevant opinions;
- J. Stephen P. Webb will complete and deliver the report to the requestor within the mutually agreed upon timeframe;

- Gwen Webb will complete and deliver the report to the requestor within the mutually agreed upon timeframe;
- K. Stephen P. Webb will, as required, provide clarification of the report's content and submit mutually agreed upon corrections or meet with the requestor to discuss requested changes within three (3) business days of written notification from the City;
 Gwen Webb will, as required, provide clarification of the report's content and submit mutually agreed upon corrections or meet with the requestor to discuss requested changes within three (3) business days of written notification from the City;
- Stephen P. Webb will ensure the report is consistent with City's policies by conferring with the requestor when necessary;
 Gwen Webb will ensure the report is consistent with City's policies by conferring with the requestor when necessary;
- M. Stephen P. Webb will confer with the Purchasing Office, AHFC, CCO, SMBR, or NHCD to interpret related policies, City Charter language and use that interpretation when completing the report;

 Gwen Webb will confer with the Purchasing Office, AHFC, CCO, SMBR, or NHCD to interpret related policies, City Charter language and use that interpretation when completing the report;
- N. Stephen P. Webb will comply with all relevant procedures, including those used for obtaining information outside of the hearing process;
 Gwen Webb will comply with all relevant procedures, including those used for obtaining information outside of the hearing process;
- O. Stephen P. Webb will disclose any personal, business, or legal relationship with a grievant, the responding department, the representative of either, any witness, or any other party of interest. In case of a conflict, Stephen P. Webb will recuse himself as a hearing officer for that specific protest;

 Gwen Webb will disclose any personal, business, or legal relationship with a grievant, the responding department, the representative of either, any witness, or any other party of interest. In case of a conflict, Gwen Webb will recuse herself as a hearing officer for that specific protest;
- P. If a hearing is cancelled (by anyone other than a hearing officer) less than 24 hours before the mutually agreed upon (scheduled) hearing time, Stephen P. Webb understands that he will be entitled to a negotiated fee; and If a hearing is cancelled (by anyone other than a hearing officer) less than 24 hours before the mutually agreed upon (scheduled) hearing time, Gwen Webb understands that she will be entitled to a negotiated fee.

TAB 4-WRITING SAMPLE

TAB 4 – WRITING SAMPLE

Stephen P. Webb

Please see the attached *Decision of the Independent Hearing Officer* in the Protest Hearing of All Points Inspection Services, Inc., which demonstrates Stephen P. Webb's experience in legal analysis, and analytical and legal report writing.

Gwendolyn Hill Webb

Please see Gwen Webb's Decision of the Independent Hearing Officer in Joan Dumais v. City of Austin/Austin Water. In this highly contested hearing, Ms. Webb had to narrow and define the scope of the proceedings before the hearing. The Decision of the Independent Hearing Officer shows the clarity of Ms. Webb's expression. She uses straightforward and understandable language in her consideration of the parties' arguments, as well as the legal applicable Utility Service Regulations.

PROTEST OF ALL POINTS INSPECTION. SERVICES, INC.	§ § 8	HEARING OFFICER
REQUEST FOR PROPOSAL CLMB314 BID PROTEST HEARING	\$ \$	STEPHEN P. WEBB

DECISION OF THE INDEPENDENT HEARING OFFICER

On Tuesday, May 7, 2013, a hearing on the protest of All Points Inspection Services, Inc. ("APIS") was held before Independent Hearing Officer Stephen P. Webb. APIS is challenging the recommendation by the City of Austin Staff to exclude consideration of APIS as a contractor under City Solicitation No. CLMB314. Present at the hearing were Beverly J. Landers, The Law Office of Beverly J. Landers & Associates, Attorney for APIS; Alayne Johnson, General Manager, APIS: Sonny Hood, Hood & Associates, Attorney for APIS; Cynthia Ellis, City of Austin, Contract Management Department ("CMD"); Rolando Fernandez, Assistant Director, City of Austin, CMD; Edward Campos, Division Manager, City of Austin, CMD; Barbara Kuhl, Division Manager, City of Austin, CMD; Debra Dibble, Assistant Director, City of Austin, Department of Small & Minority Business Resources ("DSMBR"); Joe Guerrero, Austin Energy; Stephen Leininber, Austin Energy; and Cindy Crosby, City of Austin, Law Department.

Based on the testimony offered at the hearing on May 7, 2013, and the written evidence submitted into the record, I make the following findings of fact:

Findings of Fact

On December 3, 2012 the City of Austin ("the City" or "Austin") issued Solicitation No. CLMB314 a Request for Proposals ("RFP") for Austin Energy's Home Efficiency Assistance Program ("HEAP") Tier 2 Basic Weatherization, plus HVAC services. The services included sealing up the residential home to address air infiltration; installing attic insulation, solar screens, smoke detectors, and carbon monoxide detectors; repairing

leaking faucets; repair or replacement of commodes; and (potentially) replacing electric or natural gas appliances.

- 2. Under Solicitation CLMB314, selected contractors would be responsible for providing all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontractors, bonds (if required), supervision, management, reports, incidentals, and quality control necessary to perform construction management and basic weatherization construction of qualified homes throughout Austin for "Tier 2" basic weatherization, work plus HVAC servicing and replacement.
- The CMD and AE solicited responses from general contractors and companies to provide home weatherization improvements.
- 4. The City scheduled a mandatory Pre-Proposal Conference on **December 19, 2012** that required the attendance of offerors to ensure their understanding of Solicitation CLMB314; its Job Order Program requirements and its MBE/WBE Procurement Program requirements.
- On December 20, 2012, the City issued Clarification No. 1 to CLMB314. The purpose of the clarification was to state that contract documents that were associated with the solicitation were *not* available online. The clarification indicated where contract documents could be obtained and the designated contact people.
- 6. On January 18, 2013, the City issued Addendum No. 2 to CLMB314. The addendum deleted a number of items from the original solicitation and replaced them with attachments to the addendum. The deadline for submission of sealed proposals was changed from January 31, 2013 to February 14, 2013.
- 7. On January 18, 2013, the City issued Clarification No. 2 to CLMB314. The purpose of the clarification was to explain the application of certain General Conditions terms to the contract, answer questions related to the Price List; and answer questions related to the

Evaluation Criteria that were going to be used by the Staff in selecting contractors for the project from the offerors who responded to the solicitation.

8. In the January 18, 2013 Clarification No. 2, the City specifically answered the question of the type of references that were being requested and whether weatherization of apartments was considered as relevant experience. The clarification provided the following information:

"The City is seeking a firm with experience on similar programs like the one described in the scope of work. References from similar programs conducted in **single family homes and/or multi-family units** will be accepted if the work performed is of a similar program."

(Emphasis supplied.)

- 9. On January 24, 2013, the City issued Addendum No. 3 to CLMB314. The purpose of the addendum was to change the formatting requirements for responses to the solicitation.
- 10. Solicitation No. CLMB314 is the result of nine (9) months work by multiple departments of the City. The terms and requirements of the HEAP RFP were written and revised multiple times, following multiple meetings of various City employee teams and community advisory groups that were appointed by the Austin City Council. Such community advisory groups, which included the Minority-Owned and Women-Owned & Small Business Procurement Program Advisory Committee ("Advisory Committee") and the Weatherization Advisory Committee, held multiple, well-attended open meetings during which community and stakeholder input was received and incorporated into the solicitation. When the nine (9) month process of developing CLMB314 was completed, the City Council approved the form and content of the Solicitation during an open meeting that was held on September 27, 2012.
- 11. During the nine (9) month process in which the HEAP RFP was developed, the question of how much experience from offerors would be required to be responsive to the solicitation was considered. Some thought was given to allowing or requiring dozens of references into a responsive submittal. It was ultimately decided that offerors would be

required to submit three (3) examples of comparable experience of participation in residential weatherization programs.

- 12. The City did not establish MBE/WBE utilization goals for the HEAP RFP. The City determined that there was an insufficient number of available trades to develop an appropriate MBE/WBE utilization goal for the solicitation. The City concluded that the trades of the main scope (weatherization) and the two (2) subcontracting opportunities (HVAC and Plumbing) do not lend themselves to the establishment of MBE/WBE project goals.
- 13. On April 16, 2013 the Weatherization Committee recommended to the Advisory Committee that Staff be commended for their efforts and that the Advisory Committee accept the presentation given by the CMD and AE Staff on April 16, 2013 regarding the HEAP Tiers I and II solicitation. The Weatherization Committee further recommended the City Council approve the award of HEAP contracts as recommended by Staff after review of responses.
- 14. The HEAP RFP contained Section XXIII, *Evaluation Criteria*, that advised all offerors of the criteria that the City would use to evaluate responses to CLMB314. Section XXIII contains eleven items that have maximum point values assigned to each item relevant to the offeror's company and/or proposed team. The general notice of the section provides:

"XXXIII. Evaluation Criteria

In compliance with applicable City of Austin Policy and Chapter 2267 of the Texas Government Code, the City of Austin, hereafter referred to as OWNER, seeks proposals from qualified contractors to enter into agreements to perform various Work through the Austin Energy Home Efficiency Assistance Program (HEAP) Tier 2 Project consisting of basic weatherization plus HVAC work on homes of qualifying low-income Austin Energy (AE) customers. The weatherization improvement work will be awarded to Contractors by "HEAP Assignments," as defined below.

OWNER anticipates selecting a team of Contractors on the basis of qualifications and available funding to perform basic weatherization improvements that offer the "best value" to the City of Austin based on the published evaluation criteria.

Points will be assigned to each Proposal on the basis of the scored criterion below up to the maximum available for each item. Items 1 through 6 will be evaluated on the basis of responsiveness with no specific points awarded. Total possible points are 100."

15. The HEAP RFP contains Item 8: Comparable Experience, which provides:

"Comparable Experience. 30 Points Max.

The Offeror must present evidence of its experience based upon the successful completion of three (3) similar weatherization programs for air filtration reduction, including duct system and house envelope air filtration measurement tests; attic insulation installation; solar screen installation; smoke detector; appliance evaluation; refrigerator, and evaluation and referral for standard toilets, water saving toilets; combustion appliance evaluation: proper operation and carbon monoxide (CO) emission testing to be included; evaluation of the heating and cooling system; addressing the repair or replacement of heating, ventilation, and cooling (HVAC) system; and CO detector.

The experience identified may be of similar size, score and complexity. List no more than three (3) projects performed by the Offeror completed in the last ten (10) years.

Offeror must submit: Section 00400JOC, Attachment B, Comparable Experience"

16. The HEAP RFP contains Item 9: Experience, Quality of Services, and Reputation, which provides:

"Experience, Quality of Services, and Reputation. 15 Points Max.

The Offeror's quality of past experience, past performance, quality of services and reputation will be evaluated and reference checks will be conducted on projects listed in Section 00400JOC, Attachment B, Comparable Experience. Offeror will be allocated points according to the frequency and magnitude of issues experienced on listed projects within the past ten (10) years.

- Timely completion of projects
- Timely resolution of work or material deficiencies cited

- Any instances of mechanical liens being placed on contractors projects
- Cooperative working relationship with entity and residential homeowners for which work was performed
- Prompt payment to subcontractors and suppliers at all levels
- Compliance with prevailing wage provisions and history of violations
- Compliance with other contact terms"
- 17. The HEAP RFP contains Item 11 Quality of Goods & Services by Sustainability. The item actually lists two (2) distinct evaluation criteria: Sustainable Practices and Local Business Practices. It provides, in part:

"Item 11: Quality of Goods and Services by Sustainability 10 points max

- Sustainable Practices Provide a narrative on business practices and internal policies that describe your use of recycled, reclaimed, or refurbished construction materials. Additionally, describe your internal policies and practices that encourage identification of opportunities for water and energy conservation, reducing greenhouse gas emissions, and purchasing environmentally preferable products. One (1) page limit. (5 points maximum)
- Local Business Presence The City seeks opportunities for businesses with a Local Business Presence in the Austin Corporate City Limits to participate on City contracts thereby providing a minimal environmental footprint through reduced transportation time and costs associated with Project delivery. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines the headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be base on the proposed team members on the Offeror's MBE/WBE Compliance Plan. ..."

- 18. APIS' team lists two (2) members that are located out of the corporate limits of the City of Austin. APIS, itself, is located in Webberville, Texas. LMH Plumbing Services', address is listed as 501 San Gabriel Overlook W, Georgetown, Texas, 78628.
- 19. APIS is a certified firm located at 19139 FM 969, Webberville, Texas, 78653. APIS holds certifications as an MBE, WBE, SBE and AABE. Ms. Alayne J. Johnson and Mr. Herman L. Johnson are owners of APIS, and Ms. Alayne Johnson is the General Manager.
- 20. APIS submitted a timely response to CLMB314. APIS' submittal listed APIS as the prime contractor on a team that included Mr. Sam Tedford, with an HVAC license and LMH Plumbing, with a plumber license; as subcontractors.
- 21. APIS' qualifications satisfy Items 1 though 7, and 10, of the City's evaluation criteria. APIS does not challenge the City's evaluation or scoring of its response to CLMB314 with respect to any of these items, or the Staff's scoring for its submission to Item 11 of CLMB314.
- 22. In its solicitation response, APIS listed the following three (3) examples of its comparable experience to be evaluated and scored by the Staff:
 - A. Federal Weatherization Program in Austin, Texas, on behalf of the City of Austin.
 - 1. The contract began on November, 2012 and was completed on January, 2012.
 - 2. The final amount of the contract was listed as \$8 million.
 - 3. APIS worked as a subcontractor with three (3) companies, including Climate Mechanical and Air Tech Energy System.
 - 4. The contract person for the project was listed as Joe Guerrero.
 - 5. APIS described the work as "weatherization work."
 - B. Free Weatherization/Star Program in Austin, Texas, on behalf of the City of Austin.

- 1. The contract was shown as having no start and no date of completion.
- 2. The amount of the contract was shown as "per job."
- 3. APIS listed a "Tedford" as someone who worked on the City Free Weatherization/Star Program.
- 4. APIS listed "multiple contacts" as the person of contact.
- 5. APIS described the work done on the contract as "HVAC & Heating Units Replacement."
- C. Ullrich Water Treatment Plant in Austin, Texas on behalf of the City of Austin.
 - 1. The contract start and end date was listed as "unknown."
 - 2. The amount of the contract was listed as \$650,000.00.
 - 3. APIS listed LMH Plumbing Services as a subcontractor to Archer Western.
 - 4. The contact person for the project was listed as Jay Ulray.
 - 5. APIS described the work on the contract as "Install all plumbing fixtures throughout plant."
- 23. The Staff scored APIS' response in Item 8 with 15.20 points out of a maximum 30 points, for providing one out of the required three examples of comparable experience. APIS received 15.20 points based on its experience submitted regarding the Federal Weatherization Program. Regarding the second submitted example, the Staff noted that the "Free Weatherization" and "Star Program" are two separate programs. However, the Staff could not confirm that APIS or anyone named "Tedford," including "Sam Tedford," had ever provided any work for either program as a contractor or subcontractor. Finally, the Staff noted that the third listed example, the Ullrich Water Treatment Plant is not a project that meets the scope of CLMB314. The Ullrich Plant is an *industrial facility* and is not a private residence or a home.
- 24. The Staff scored APIS in Item 9 with five points out of a maximum 15 points. The Staff assessed a full five points to APIS for the Federal Weatherization program, which was one out of three examples of comparable experience. APIS received no score for the Free Weatherization/Star Program example; APIS also received no points for the Ullrich Water Treatment Plant example.

- 25. In evaluating APIS' submission to Item 11, the Staff scored APIS five out of ten points. It was scored five points for sustainability and zero points for Local Business Presence, because none of the team members were located in Austin.
- 26. The Staff recommended that six (6) firms out of nine (9) firms that responded to CLMB314 be selected for participation in the HEAP Tier 2 project. The recommended selected firms [with their scores for Items 8, 9 and 11] were:

1.	Go Green Squads, LLC (WBE/FW)	(25.60/15.00/10.00)
2.	McCullough Heating & Air Conditioning, Inc.	(28.00/15.00/9,40)
3.	Climate Mechanical, Inc.	(27.20/15.00/9.60)
4.	Airtech Energy Systems, Inc.	(28.00/15.00/7.80)
5.	Good Neighbor Management, Inc. dba City Conservation	(21.60/15.00/8.80)

American Conservation & Air, Inc.

- 27. The firms that were not selected were APIS; Trinh's AC Services, LLC; and Trim Construction Builder, LLC. APIS' scores for Items 8, 9 and 11 were 15.20/5.00/4.20. The remaining two (2) firms' submittals were deemed unresponsive.
- 28. The Staff's rationale for not recommending APIS for selection included scored deficiencies in Items 8, 9 and 11. For Item 8, APIS listed only one out of three programs that satisfied the requirements of the solicitation. For Item 9, APIS, again, listed only one program that met the solicitation requirements, and its qualitative experience and reputation score reflected APIS' listing of only one program which met the solicitation requirements. Because neither APIS nor LMH Plumbing Services is located within the corporate city limits of the City of Austin, APIS team received a score of zero for Item 11.

6.

(21.00/15.00/3.60)

- 29. On April 16, 2013 APIS timely filed its Formal Written Notice of Intent to Protest the Staff recommendations regarding Solicitation CLMB314. APIS further requested that further action by Austin City Council on the Staff's recommendation be postponed.
- 30. The Staff posted its recommendations regarding selected contractors to CLMB314 for City Council consideration in compliance with the Texas Open Meetings Act. The posting lists the scores as to all offerors, including those companies, such as APIS, which were not recommended to be selected. Pending the resolution of APIS formal protest, the Staff has made more than one posting for Council action so that the Council could consider the HEAP RFP responses at the first available Council meeting.

Discussion

All Points Inspection Services, Inc.'s Position

APIS challenges the methodology and assumptions used by the Staff in evaluating APIS' submission in Items 8 and 9 to CLMB314. With respect to Item 8 criteria, APIS asserts that the basis used to evaluate contractor experience has a disproportionately adverse impact on minority offerors. APIS asserts that the Staff's scoring of its submission to Item 9 defames the company; APIS believes the Staff evaluation is based on false or otherwise unreliable reporting.

APIS contends that the Solicitation's evaluation criteria for Item 8 is unfair to minority offerors. APIS argues that rigidly requiring three examples of prior experience would tend to eliminate from consideration most minority offerors, who would tend to have less experience. APIS further asserts that more consideration should have been given to the fact that APIS performed admirably on many home weatherizations while serving as a subcontractor on the Federal Weatherization program. If the Staff values quantity of experience, which APIS argues is simplistic and unfair, it should examine APIS' quantity of work performed on the federal weatherization project. APIS suggests that the way the solicitation was written is prima facie evidence that MBE companies do not have an advocate within the ranks of the City's Staff.

APIS's challenge to the Staff's scoring of its Item 9 submission is even more pointed. APIS states that the 5 out of 15 points score that the Staff assigned to its submission is simply defamatory because it implies that APIS is a substandard contractor that does not compare to its competitors. In fact, APIS argues that it has a sterling record of performance under adverse circumstances. Moreover, the Staff evaluation of its performance as a subcontractor actually makes its competitors to this solicitation look better than they should. Prior to the hearing, APIS assumed that the Staff was either deliberately biased or negligent in its reliance upon the clearly biased references of competitors. APIS even suggested that the Staff's actions in scoring or even posting the HEAP RFP scores could be legally actionable. When APIS was apprised of the Staff's actual evaluation rationale of Item 9 at the hearing, it maintained that the process was still flawed because of the assignment of point values based on the number of comparable examples of experience reflected in its Item 8 response. Also, the scoring has the damaging effect of disparaging APIS' professional reputation because the public does not understand how the points for Item 9 are distributed. Members of the public could assume that the Staff is calling APIS substandard.

APIS requests that its scored points in its solicitation be "adjusted," particularly those points scored for Item 9. APIS argues that it is within the City's power to change APIS' scoring based on "equitable" grounds.

City Staff's Position

The Staff's position could not be more straightforward. The Staff contends that APIS simply failed to submit a response to CLMB314 that would generate a winning score under the established matrix and evaluation criteria. The Staff refutes any allegation of bias against APIS or any other MBE/WBE offeror by simply describing the long, inclusive process of the development of Solicitation CLMB314 that included Staff, community participation and MBE/WBE advisory groups. The Staff asserts that it is not responsible for how the public could misconstrue its evaluation of APIS' submittal. It performed its evaluation of APIS' response to CLMB314 in the same way it evaluated *all* responses. The Staff asserts that "re-scoring" APIS' proposal after the deadline for submissions is unjustified, improper and illegal.

Analysis

Some elements of APIS' argument are completely lacking in merit. APIS' assumptions of bias or negligence on the part of the Staff were not supported by a shred of evidence or persuasive argument. APIS was simply misinformed about the process that resulted in the development of the CLMB314 solicitation. Obviously, APIS did not participate in the nine month public process or request to address the City Council when it *adopted* the solicitation's format and content in a public meeting. APIS' criticisms of the Staff and the process of developing the HEAP RFP were simply unfounded.

APIS' argument about the disproportionately adverse impact on MBE contractors is not persuasive. The assumption that minority firms would not have experience in residential weatherization and HVAC services is contradicted by APIS' own experience. Moreover, APIS' solicitation response attempts to utilize the experience of its subcontractors to generate its three comparable examples of experience. That approach would have been satisfactory except for the obvious deficiencies in the second and third examples. A contractor's experience on the Ullrich Water Treatment Plant is irrelevant, on its face. It should not have been offered as a response to this RFP. Experience on either the Free Weatherization Program or the Star Program could have been used if APIS had listed a subcontractor whose participation on either program could have been confirmed. APIS' score was the direct result of its lack of care in responding to CLMB314, not a deficiency in the solicitation, itself, or the evaluation process.

Finally, the Staff is *obligated* to review APIS' response according to the same rules it scores any response. Changing the scoring rationale or methodology would be unfair to all responders who followed the rules of the CLMB314. The resulting score from following the evaluation criteria does not defame APIS because, as a matter of law, it is a *true* representation of a score derived by applying APIS' proposal to a published evaluation criteria. Neither the Staff nor the City is responsible for how someone else might misunderstand the HEAP RFP selection process, and consequently, potentially publish defamatory information about APIS.

For the reasons stated herein, I recommend that APIS protest be OVERRULED.

Issued in Austin, Texas this 10th day of May, 2013.

chen P. Webb

Independent Hearing Officer

Utility Hearing Number GHW 20161018.1

In Regard to the Matter of	§	On Appeal to the Hearing Officer
•	§	
Joan Dumais	§	
Account Number: 94939600006	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	
"Customer"	§	
	§	City of Austin, Austin Water
and	Š	
	S I	
City of Austin/Austin Water	§	
"City"	§	Austin, Texas

DECISION OF THE HEARING OFFICER

Ms. Joan Dumais ("Customer") filed a Request for Administrative Hearing with Austin Energy on September 2, 2016. A hearing was convened on Tuesday, October 18, 2016 at 10:00 a.m. at the Waller Creek Center, Room 101, 625 E. 10th Street, Austin, Texas. The purpose of the hearing was to hear Customer's appeal concerning charges to Customer's water and wastewater utility bill for the billing period of July 19, 2016 through August 11, 2016. The property that is the subject of the appeal is located at 6817 Telluride Trail, Austin, Texas ("the Property"). Customer appeared in person at the hearing. The City of Austin/Austin Water ("City") was represented by Ms. Angela Baker, Utility Account Analyst for Austin Water.

I. Issue

Whether Customer should be required to pay City up to \$850.00 for water and wastewater utility charges for the billing period July 19, 2016 through August 5, 2016.

II. Findings of Fact

Based upon the testimony heard at the hearing and the evidence submitted, the Hearing Officer makes the following factual findings.

 Customer filed a Request for Administrative Hearing with Austin Energy on September 2, 2016 to dispute billing charges of \$850.00 for water/wastewater services during the billing period of July 19, 2016 through August 11, 2016. Customer provided additional materials discussed below, including plumbing bills, and statements from Gerardo Silva, Licensed Irrigation Specialist, and Gregorio A. De La Paz, Licensed Plumber. 2. This hearing concerns the Customer's water usage at the Property during the following three billing periods as shown on the following chart. The billing period in dispute is shown in bold. The billing period in question shows water use almost five (5) times the reported water use of the previous billing period, and water usage charges almost seven times the amount of the previous billing period.

BILLING PERIOD	WATER AMOUNT BILLED	WATER USAGE (GALLONS)	AVERAGE WATER DIALY USAGE (GALLONS)	WASTEWATER AMOUNT BILLED	Wastewater Usage (Gallons)	AVERAGE WASTWATER DIALY USAGE (GALLONS)
07/19/16 – 08/11/2016	\$1,005.42	75,400	3,278.26	\$49.92	5,000	217,39
06/17/16 07/19/16	\$146.35	14,700	459,38	\$49.92	5,000	156.25
06/04/16 — 06/17/16	\$20.77	2,700	207.69	\$27.06	2,700	207.69

- 3. The Property has been owned by Customer since 2007. It is a two-story single family dwelling that is approximately 2,240 square feet. It has 2 ½ bathrooms and an irrigation system, but no pool. Although Customer typically rents out the Property, there were no tenants residing at the Property during the disputed billing period.
- 4. On June 4, 2016, a start service request was completed by the City, and utilities at the Property were provided to Customer.
- 5. On July 18, 2016, and July 26, 2016, Mr. Gregorio De La Paz, Licensed Plumber No. J-35357, replaced faucet fixtures at the Property. In a written statement dated August 29, 2016, Mr. La Paz reported that there were no water leaks before or after he completed his work.
- 6. On August 15, 2016, a stop service request was completed by the City, at Customer's request.
- 7. On August 17, 2016, Customer requested a re-read due to the reported spike in water consumption.
- 8. On August 18, 2016, a monthly reading was taken for the end of the billing cycle.

- 9. Customer had new tenants move into the Property on August 11, 2016.
- 10. During the three billing periods shown above, including the billing period beginning on July 19, 2016, and ending on August 11, 2016, the water and wastewater utility service was in Customer's name while repairs were being done. The three (3) billing periods are the only water usage history for Customer at the Property.
- 11. During the three (3) billing periods, Customer had some "cosmetic" renovations done to the Property including, painting, new faucets and counters, and new cabinets. Customer visited the Property every day during the repairs and saw no evidence of high volume water use.
- During the renovations, Customer did find a water leak which filled a bucket twice over five (5) or six (6) days before the leak could be repaired. Customer stated to the City, in a phone conversation on August 25, 2016, that the minor leak was repaired within a few days of discovery and she was able to use a gallon jug to catch the leaking water, which had filled two (2) to three (3) times. Customer estimated the water loss to be approximately 1,5 gallons.
- 13. Customer's information regarding a water leak is different from the information presented by Mr. La Paz, and it is not clear whether the leak was reported to Mr. La Paz, or whether it happened before or after Mr. La Paz performed his work. Customer did not present evidence of the leak repair.
- 14. On September 7, 2016, Mr. Geraldo Silva, Licensed Irrigator No. 16563, checked the entire irrigation system at the Property, and found no leaks and system "ok." During the inspection, Mr. Silva inspected and adjusted the entire irrigation system and performed a pressure test on irrigation lines. The pressure gauge held steady for ten (10) minutes at 70 pounds per square inch ("psi"). Settings on the irrigation system control were also checked and were set according to the City of Austin schedule of once a week for 15 minutes at each station. This testing occurred after the billing period in dispute.
- 15. Customer replaced sod at the property. This sod was laid after the new tenants moved in, and after termination of service in Customer's name.

III. Decision

A. Applicable Ordinances (City of Austin Utility Regulations)

§ 15-9-37 - CUSTOMER'S RESPONSIBILITIES.

- (A) A customer is responsible for utility service provided on the customer's side of the point of delivery, including:
 - (1) excessive consumption caused by faulty equipment or settings on equipment;
 - (2) damage caused by an open valve or circuit after service initiation; or
 - (3) a violation of this chapter, including utility service diversion, unlawful use of service, or damage to City utility equipment.

(Emphasis supplied.) 2003 Code §15-9-35; 1992 Code §18-4-054 Ord. 040805-02; Ord. 20070927-006; Ord. 20130620-002,

§ 15-9-141 - ADJUSTMENT OF EXCESS WATER BILL IF LEAKS ARE REPAIRED.

- (A) A single-family residential customer who receives a water bill showing metered consumption that exceeds the customer's expected volume at that service address for up to two consecutive billing periods may apply for a bill adjustment under this section if: (1) the director determines the volume exceeding the customer's expected volume was due to water line leaks at the service address that were not within the customer's control; (2) the customer exercised due diligence in repairing the leaks; and (3) the customer has not received any billing adjustment under this section within the preceding 12 months.
- (B) Within 90 days of having the leaks repaired, the customer must submit documentation in a form acceptable to the director that all water line leaks on the customer's property that contributed to the excess consumption have been repaired.
- (C) A customer is not eligible for a bill adjustment under this section if the director determines that: (1) the customer has been or is wasting water in violation of Section 6-4-12 (Water Waste Prohibited); (2) the customer has been or is violating any provision of, or rule adopted under, Chapter 6-4 of this code (Water Conservation); or (3) the cause for any amount of the customer's excess consumption is an unrepaired visible water leak, dripping faucet, broken sprinkler head, pool crack, or malfunctioning pool auto-filler.
- (D) For the purposes of this section, the director will determine a customer's expected volume (EV) for a given billing period by using one of the following methods in the review of an application:
 - (1) Metered volume used at the service address for the same month in the previous year;
 - (2) Average metered volume used at the service address for the same month over multiple years;
 - (3) Average metered volume used at the service address for similar seasonal months in prior years;

- (4) Metered volume used at the service address for subsequent similar months; or
- (5)

Average metered volume used at the service address for current seasonal months.

- (E) If the director determines that the customer qualifies for a bill adjustment under this section, the director will recalculate the bills for up to two consecutive billing periods in accordance with the following formula by establishing an adjusted total volume and charging a rate for a portion of the volume that exceeds the expected volume.
 - (1) The adjusted total volume (ATV) is the sum of the actual metered volume (AMV) of water consumed less fifty percent of the actual metered volume that exceeds expected volume (BV). The preceding sentence is represented by the formula: ATV=AMV-((AMV-BV)/2).
 - (2) Charges for the adjusted total volume will be the sum of: (a) the expected volume (EV) charged at the rate for single-family residential customers; and (b) the volume represented by that portion of the adjusted total volume equal to (AMV-EV)/2 charged at the lower of the rate for single family residential customers, or a rate for excess usage.
- (F) If by using the adjusted total volume for a bill adjustment under this section the customer's corresponding wastewater volume would be lower than the volume originally billed to the customer, the director may adjust the corresponding wastewater charges.
- (G) If a customer receives a bill adjustment under this section, the director may consider the adjusted total volume used in that adjustment to determine the customer's wastewater average for the applicable cycle during which the adjustment was received.
- (H) A determination by the director under this section is final and may not be appealed.
- (I) A customer who receives a bill adjustment under this section may not request an administrative hearing under Article 12 (Administrative Review and Hearing) for the same water billing period to which the credit is applied in order to dispute the administrative adjustment, or the remaining amount of the excess usage charged to the customer.

Ord. 20160519-003

§ 15-9-142 - ADJUSTMENT OF HIGH-VOLUME WATER BILL,

- (A) A single-family residential customer whose bill shows consumption at the service address for up to two consecutive billing cycles that is at least three times the expected volume may apply to the director for an adjustment to the bill under this section if: (1) the customer files the request for an adjustment no later than 90 days after the customer's receipt of the bill; and (2) the customer has not received an adjustment under this section within the preceding 24 months. The customer must have at least 12 months of uninterrupted water billing history at the service address for which the application is filed.
- (B) For the purposes of this section, the director will determine a customer's expected volume (EV) for a given billing period by using the customer's metered volume used at the service address for the same month over the prior two years. If records of the customer's metered volume used at the service address for the same month over the prior two years are not available, then the director will determine the customer's expected volume by considering:

- (1) Metered volume used at the service address in the same month in the previous year;
- (2) Average metered volume used at the service address in similar seasonal months in prior years;
- (3) Metered volume used at the service address for subsequent similar months; or
- (4) Average metered volume used at the service address for current seasonal months.

* * * * *

- (F) A customer is not eligible for a bill adjustment under this section if the director determines that: (1) the customer has been or is wasting water under Section 6-4-12 (Water Waste Prohibited); (2) the customer has been or is violating any provision of, or rule adopted under, Chapter 6-4 of this code (Water Conservation); (3) the cause for any amount of the customer's excess consumption was a visible water leak, dripping faucet, broken sprinkler head, pool crack, or malfunctioning pool autofiller; or (3) water intensive uses, including but not limited to a pool, vanity pond, or spa, could be a cause for the excess metered consumption.
- (G) If the director determines that the customer qualifies for a bill adjustment under this section, the director will recalculate the bills for up to two consecutive billing periods in accordance with the following formula by establishing an adjusted total volume and charging a rate for a portion of the volume that exceeds the expected volume.
 - (1) The adjusted total volume (ATV) is the sum of the actual metered volume (AMV) of water consumed less fifty percent of the actual metered volume that exceeds expected volume (EV). The preceding sentence is represented by the formula: ATV=AMV-((AMV-EV)/2).
 - (2) Charges for the adjusted total volume will be the sum of: (a) the expected volume (EV) charged at the rate for single-family residential customers; and (b) the volume represented by that portion of the adjusted total volume equal to (AMV-EV)/2 charged at the lower of the rate for single-family residential customers, or a rate for excess usage,
- (H) If by using the adjusted total volume for a bill adjustment under this section the customer's corresponding wastewater volume would be lower than the volume originally billed to the customer, the director may adjust the corresponding wastewater charges.
- (I) If a customer receives a bill adjustment under this section, the director may consider the adjusted total volume used in that adjustment to determine the customer's wastewater average for the applicable cycle during which the adjustment was received.
- (J) A determination by the director under this section is final and may not be appealed.
- (K) A customer who receives a bill adjustment under this section may not request an administrative hearing under Article 12 (Administrative Review and Hearing) for the same water billing period to which the credit is applied in order to dispute the administrative adjustment, or the remaining amount of the excess usage charged to the customer.

Ord. 20160519-003.

§15-9-154 - PRIMA FACIE EVIDENCE OF CONSUMPTION.

The reading registered on a City utility meter is prima facio evidence of the amount of service provided to a customer.

2003 Code §15-9-214; 1992 Code §18-4-303 Ord. 040805-02.

B. Discussion

In this case, the City presented evidence of Customer's water use which showed a spike in her water bill, based on water usage from \$146.35 to \$1,005.42 from one (1) billing period to the next, based on meter readings for the Property, which was vacant at the time, except for repair personnel performing renovations. The City has no explanation for the spike in water use. But, the City's position was that it has appropriate checks and audits for meter accuracy, that subsequent meter readings were sequential and serve as a safeguard for accuracy and meter malfunction, and that further investigation determined that there were no leaks or any obvious explanation for the high reported water usage. Therefore, it is unknown what specifically caused the spike in water consumption recorded at the water meter at the Property.

Customer provided conflicting evidence regarding water usage. First, there was the plumber's report which stated that no leaks were found during replacement of faucets at the Property, and there were no leaks before or after the work was done. Then, there was Customer's testimony that there was a leak at the property which was repaired within 5-6 days, during which about 1.5 gallons of water were lost, according to Customer's estimation. Customer presented no evidence of leak repair. Customer does have an irrigation system at the Property which was tested and set to City of Austin watering standards on September 7, 2016, after the billing period in question. Either the water leak, the irrigation system settings, or both factors together, could account for the reported high volume water use. Although the billing period ending on August 11, 2016 does include unusually high volume water usage, Customer's testimony did not rebut the prima facie evidence presented by the City of the meter readings and the validity of the water usage recorded. Customer did not present information on the leak repair, including when it occurred and how extensive it was. There was also no information on the state of the irrigation system during the billing period in question, only that

it was set to City of Austin water schedule after the billing period in question. The Hearing Officer has no independent means of determining Customer's actual water use or explaining Customer's reported high volume water use, based on the evidence of record. There is no indication of meter malfunction, and there is evidence of high water use facilities at the property and a water leak.

At the same time, Customer's limited billing history at the Property renders her ineligible for a billing adjustment under existing Utility Service Regulations. Customer is not eligible for a billing adjustment based on leak repair under Utility Service Regulations at City Code, § 15-9-141 — Adjustment of Excess Water Bill if Leaks Are Repaired, because Customer presented no evidence of leak repair, and presented conflicting evidence that no leaks were found before or after renovations were done. The billing adjustment for leak repair requires the Customer to demonstrate evidence of due diligence in repairing any leak which was the source of high volume water use. Likewise, Customer is not eligible for a bill adjustment under Utility Service Regulations at City Code, § 15-9-142 — Adjustment of High Volume Water Bill, because Customer has not been a customer of Austin Water with "12 months of uninterrupted water billing history" as required under that regulation. Unfortunately, the City's provisions for billing adjustments do not apply to this situation, where there is no known reason for the high volume water use, no evidence of diligent leak repair which could qualify customer for a leak adjustment, and no evidence of meter error or malfunction.

It is ordered that, based upon the evidence presented in this hearing, the findings of fact and applicable ordinances cited herein, Customer's appeal in this case is denied. The City's charges for to Customer water and wastewater utility service for the billing period beginning on July 19, 2016 and ending on August 11, 2016 are affirmed. Customer is ordered to pay the water and wastewater charges for the billing period ending on August 11, 2016 as they appear on her utility invoice. City is requested to provide Customer with a payment agreement to allow Customer to pay the invoice for the billing period in a reasonable time, if Customer so requests.

Issued this 25th day of October, 2016.

AMMAN GULL STELL S

TAB 5-

PROJECT MANAGEMENT STRUCTURE AND PERSONNEL

TAB 5 – PROJECT MANAGEMENT STRUCTURE AND PERSONNEL

The following is a general explanation and of Webb & Webb attorneys and staff which details the project leadership and reporting responsibilities and interface with City project management and team personnel for Webb & Webb attorneys and support staff.

In general, Webb & Webb would address the needs of the City of Austin for hearing officers under this solicitation as it has done in the past. Webb & Webb administrative and legal support staff (Casey Powell and Sierra Herrera) would be the points of contact for administrative matters with the City of Austin, including accepting hearing assignments from the City of Austin, scheduling hearings in accordance with the parties' schedules, maintaining the hearing docket, and organizing and maintaining the hearing files. Stephen P. Webb would be responsible for assigning hearing, as between himself and Gwen Webb. Before the hearing, Stephen P. Webb and Gwen Webb would coordinate as needed with City of Austin staff on the substantive and procedural aspects of the hearings. This would include discussions with City of Austin staff in the Purchasing Department, Austin Housing Finance Corporation, Capital Contracting Office, Neighborhood Housing and Community Development, Small and Minority Business Development, and any other agency of the State or Federal government as directed by the City of Austin.

Once hearings are accepted and scheduled at Webb & Webb, and the appropriate coordination with City staff has occurred, if any is needed, the Webb & Webb legal and administrative support staff would enter it on the docket and calendar of hearings maintained by Webb & Webb, create and organize the file, obtain the hearing package from the applicable City of Austin department. Webb & Webb legal and support staff would coordinate with City of Austin staff to ensure that all applicable ordinances and regulations are available to the hearing officers. Stephen P. Webb or Gwen Webb would conduct the hearings in accordance with directives from the City of Austin and applicable law, including duly adopted regulations and policies, and interpretations of those laws. After the hearings, conducted with appropriate administrative procedures, Stephen P. Webb and Gwen Webb would review the evidence and issue a written decision in the format required by the City of Austin, including findings of fact, conclusions of law referencing the evidence and applicable law, and ordering or recommendation language. Webb & Webb legal and administrative support staff would format and prepare the Decision of the Hearing Officer or other report, as appropriate, in accordance with the required City format. If clarifications are requested by City of Austin staff, then Webb & Webb would work with City staff to identify their concerns and address any revisions to the decision

of the hearing officer needed after that consultation with City staff. If a revised decision is required, then Stephen P. Webb and Gwen Webb would work with the legal and administrative support staff at Webb & Webb to ensure that revised decision is issued in proper format. The file would then be closed and the records maintained as directed by the City of Austin.

Webb & Webb possesses the necessary administrative support and office equipment to perform the duties as a Hearing Officer. Webb & Webb maintains an office with the following equipment: multiple telephones and telephone lines which are monitored during business hours by multiple assistants or an answering machine; 2 fax machines with independent numbers; multiple personal computers with internet service, Windows and Microsoft Office compatible software; electronic mail addresses; and access to both physical and digital law libraries. Webb & Webb also employs experienced paralegal and legal assistant staff with years of experience serving clients and participating in legal proceedings at every level of government and across a variety of roles.

Stephen P. Webb and Gwen Webb will provide the Hearing Officer services under the contract and use their knowledge and experience to perform and manage such services in accordance with all contract requirements. Stephen P. Webb and Gwen Webb will prepare for and conduct the hearings; research, draft and issue each decision. The staff at Webb & Webb, Casey Powell, Paralegal, and Sierra Herrera, Legal Assistant will be responsible for maintaining, organizing, and scanning in each hearing's sign in sheets and exhibits. Casey Powell and Sierra Herrera's roles will amount to less than 10%. Webb & Webb will not use any subcontracts for the fulfillment of the serves requested under this contract.

Please see the chart of Webb & Webb Hearing Officer Responsibilities on the following page.

Also, please see attachments referenced in the Executive Summary on the following pages, including:

Resumes of Stephen P. Webb, Attorney, Gwendolyn Hill Webb, Attorney, Casey Powell, Paralegal and Office Manager, and Sierra Herrera, Legal Assistant;

References of Webb & Webb by the City of Austin in Requests for Council Action for Legal Services on Wholesale Water Rate Appeal dated 6/12/2014; and River Place MUD Water and Sewer Rate Appeal dated 2/26/2016.

List of Martindale-Hubbell Peer review and recognitions for Stephen P. Webb and Gwendolyn Hill Webb; and

State Bar of Texas Identification Cards for Stephen P. Webb and Gwendolyn Hill Webb; Mediation Certificates of Gwendolyn Hill Webb.

#	Stephen P. Webb, Lead Attorney	Gwendolyn Hill Webb, Attorney	Casey Powell, Paralegal	Sierra Herrera, Legal Assistant
1	Assign cases to attorneys Webb & Webb attorneys to conduct hearings at the scheduled time.	Accept cases as assigned by Stephen P. Webb to conducting hearings at the scheduled time.	Serve as point of contact for administrative purposes.	Serve as point of contact for administrative purposes.
2	Coordinate with City of Austin staff on substantive matters as needed before hearings.	Coordinate with City of Austin staff on substantive matters as needed before hearings.	Monitor phone calls and electronic communications regarding hearings, and accept scheduling requests.	Monitor phone calls and electronic communications, and accept hearing scheduling requests.
3	Conduct hearings as assigned.	Conduct hearings as assigned.	Accept hearing scheduling requests on behalf of Webb & Webb.	Accept hearing scheduling requests on behalf of Webb & Webb.
4	Review evidence and prepare decisions of the hearing officer in accordance with City of Austin policies and applicable law.	Review evidence and prepare decisions of the hearing officer in accordance with City of Austin policies and applicable law.	Maintain hearing dockets, organize files, prepare and format decisions written by Webb & Webb attorneys in accordance with City of Austin directives.	Maintain hearing dockets, organize files, prepare and format decisions written by Webb & Webb attorneys in accordance with City of Austin directives.
5	Issue decisions in a timely manner.	Issue decisions in a timely manner.	File decisions and close files as directed by City of Austin.	File decisions and close files as directed by City of Austin.
6	Coordinate with City of Austin staff to provide clarifications as requested.	Coordinate with City of Austin staff to provide clarifications as requested.		
7	Revise decision of the hearing officer in accordance with discussions with City of Austin staff.	Revise decision of the hearing officer in accordance with discussions with City of Austin staff.	Prepare and format revised decisions written by Webb & Webb attorneys in accordance with City of Austin directives.	Prepare and format revised decisions written by Webb & Webb attorneys in accordance with City of Austin directives.
8	Issue revised Decision of the Hearing Officer.	Issue revised Decision of the Hearing Officer.	File decisions and close files as directed by the City of Austin.	File decisions and close files as directed by the City of Austin.
9	Attend all required training sessions, and review all required materials and applicable law, including regulations, City of Austin interpretations.	Attend all required training sessions, and review all required materials and applicable law, including regulations, City of Austin interpretations.	Update all administrative protocols as instructed by attorneys and City of Austin following communications, correspondence or training.	Update all administrative protocols as instructed by attorneys and City of Austin following communications, correspondence or training.

STEPHEN P. WEBB

WEBB & WEBB, ATTORNEYS AT LAW 2028 E. Ben White Blvd., Suite 425 Austin, Texas 78741

EDUCATION AND LICENSES:

B.A. - Yale University, New Haven, Connecticut (Major: Political Science)
J.D. - University of Texas at Austin School of Law
Licensed by the State Bar of Texas (State Bar No. 21033800)
Admitted to practice in Federal Court, Western District of Texas

EXPERIENCE:

WEBB & WEBB, ATTORNEYS AT LAW

1991 to Present

AV Rated private law practitioner, specializing in administrative law, civil litigation, employment law, education law, municipal law, environmental law, natural gas utilities, and intergovernmental relations. Represent cities, businesses and individuals in administrative and regulatory matters, including contested cases at the Railroad Commission of Texas and the Texas Workforce Commission. Successfully prosecute municipal opposition to hazardous waste disposal well through appeal to the United States Supreme Court. Serve as an independent and impartial Special Education Hearing Officer in Due Process Hearings under the Individuals with Disabilities Education Improvement Act and predecessor legislation, with decision affirmed through appeal to the United States Supreme Court. Has spoken at legal conferences on issues regarding special education law.

1992-1999 - Texas Motor Vehicle Board Commissioner.

1994-2013- Special Education Hearing Officer for the Texas Education Agency.

1995 to present-Bid Protest Hearing Officer for the City of Austin,

1995 to Present - Texas Baptist Children's Home Board Member.

2016 to Present-Hearing Officer for City of Austin/Austin Energy

HOUCHINS & WEBB, ATTORNEYS AT LAW

1988 to 1991

Conducted administrative practice before Railroad Commission of Texas and other agencies of the State of Texas; Represent a wide variety of transportation clients on legal matters, including licensing, ratemaking and hazardous and industrial waste transportation.

STATE OF TEXAS

Assistant Director of Transportation Division of the Railroad Commission of Texas - Legal. 1984 to 1988

Supervised and reviewed the work of a staff of Railroad Commission hearing examiners in administrative litigation and rulemaking proceedings pertaining to transportation regulation.

Hearings Examiner, Transportation Division, Railroad Commission of Texas.

1980 to 1984

Held administrative proceedings pertaining to transportation regulation, surface mining and other matters as assigned; wrote proposals for decisions in cases of licensing, ratemaking and enforcement; Formulated rules on procedural and substantive matters regarding Commission jurisdiction, including first Minority Business Enterprise rules.

GWENDOLYN HILL WEBB WEBB & WEBB, ATTORNEYS AT LAW 2028 E. Ben White Blvd., Suite 425 Austin, Texas 78741

EDUCATION and LICENSES:

B. A., Yale University, New Haven, Connecticut (Major: Political Science); J. D., University of Texas at Austin School of Law; Licensed by the State Bar of Texas; Certified Mediator; Post Graduate education in Conflict Resolution.

EXPERIENCE:

WEBB & WEBB, ATTORNEYS AT LAW

1991 to Present

Provide legal and mediation services in private law practice specializing in administrative law, municipal law, water and environmental law, public utility law, and intergovernmental relations; Independent and impartial Special Education Hearing Officer and Mediator for the Texas Education Agency; Assist management teams regarding public financing options for land development and utility services; Member, Austin Citizen's Task Force on the Economic Conversion of Bergstrom Air Force Base and Governor Ann Richard's Task Force on Economic Transition; City of Austin Planning Commissioner 1998-2000; City of Austin Water/Wastewater Commissioner, 2008-2012 (Chair, October, 2011-2012).

CITY OF AUSTIN

SUPERVISING ATTORNEY - WATER AND WASTEWATER UTILITY AND DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION, ACTING DIRECTOR OF INTERGOVERNMENTAL AFFAIRS, ASSISTANT CITY ATTORNEY

1985 - 1990

Represented and advised Austin Water and Wastewater Utility and Department of Public Works and Transportation on legal issues related to water resources planning, capital improvement projects, water and wastewater rate litigation, municipal utility district creation, supervision, and annexation, construction contracts, utility service agreements, water rights, water quality and other environmental matters; Developed, implemented and coordinated the City of Austin legislative program for the Texas Legislature.

STATE OF TEXAS

ASSISTANT CHIEF HEARINGS EXAMINER, TEXAS WATER COMMISSION; HEARINGS EXAMINER, TEXAS WATER COMMISSION; STAFF ATTORNEY, TEXAS DEPARTMENT OF WATER RESOURCES; HEARINGS EXAMINER, TEXAS AERONAUTICS COMMISSION

1979 - 1985

Trained and supervised Hearings Examiners and advised Texas Water Commissioners in water rights permitting, waste discharges and disposal, water rates, and municipal utility district programs; Represented the Executive Director in water rights matters; conducted contested case hearings and wrote Proposals for Decision in water rights, waste disposal, hazardous waste disposal and water rights adjudication; Provided counsel to Texas Aeronautics Commission, including administrative hearings and proposals for decision regarding certificates of convenience and necessity for intrastate air transportation, and coordination with Federal air transportation regulation.

21ST CENTURY CONTINUING LEGAL EDUCATION PUBLICATIONS:

Water Rights Status Update: Developing and Protecting Municipal Water Supplies for Dallas in the 21st Century, June 3, 2011, Dallas City Attorney's Office Continuing Legal Education

Texas Water Rights Permitting Issues: Planning and Developing Municipal Water Supplies May 2008, 9th Annual Changing Face of Water Rights in Texas

Bringing Win/Win to the Table: Water Rights Negotiation Strategies for Cities, Utilities and Developers May 2006, 7th Annual Changing Face of Water Rights in Texas

The Case for Texas Water Conservation Regulation
January 2003, 3rd Annual TRWA/TWCA Water Law Seminar

Involuntary Amendment of Texas Water Rights
January 2001, Annual TRWA/TWCA Water Law Seminar

CASEY POWELL, PARALEGAL AND OFFICE MANAGER

Webb & Webb, Attorneys at Law 2028 E. Ben White Blvd., Suite 425 Austin, Texas 78741

PARALEGAL AND OFFICE MANAGER, WEBB & WEBB, ATTORNEYS AT LAW OCTOBER 2009—PRESENT

In my present position, I provide administrative hearing and litigation support services for two (2) attorneys; I also manage the team providing clerical and support services and provide billing and general administrative services to the law firm.

Litigation and Hearing Support

- Conduct initial telephone interview with clients concerning legal representation and potential claims.
- Draft Original Petition and all instruments relative to commencing an action in District Court.
- Draft Notice of Appearance, Answer, Affirmative Defenses, Counter Claims and Cross Claims relative to responding to an action.
- Draft discovery requests (Admissions, Interrogatories and Request for Production of Documents) requests and responses relating to civil litigation, employment law, administrative law, probate, guardianship, and breach of contract matters.
- Draft Pre-Filed Testimony and Exhibit Notebooks for Administrative Law Hearings.
- Prepare exhibits for pleadings, hearings and trials.
- Prepare Trial Notebooks for attorneys, clients, opposing counsel and judges.
- Prepare and complete filing and service for all State agencies, District Courts, Appeals Courts and Federal Courts for attorneys Stephen P. Webb and Gwendolyn Hill Webb.
- Attend all hearings and trials as administrative support.

Special Education Hearing Officer and Mediator Support

- Review Texas Education Agency Due Process Hearing Complaints.
- Draft Initial Scheduling Orders, Continuance Orders, Prehearing Orders and Dismissals.
- Assist in preparation of all orders and decisions.
- Draft mediation related correspondence.
- Maintain database for mediations and Due Process Hearings.

General Administrative Support Services

- Supervise clerical and administrative staff.
- Ensure forms and supplies are current and accessible.
- Prepare client and hearing officer invoices in accordance with contract provisions.
- Serve as liaison with attorneys, clients, judges, and agencies.
- Maintain office database for avoiding conflicts of interest and meeting deadlines.

EDUCATION

Exira Junior/Senior High School, Exira, IA — High School Diploma Graduated, Class of 2002.

<u>Des Moines Area Community College</u> – Degree - *Paralegal AS*

August 2005- December 2005
Maintained a 3.8 GPA
Paralegal Program approved by the American Bar Association

Sierra Herrera, Legal Assistant Webb & Webb, Attorneys at Law 2028 E. Ben White Blvd., Suite 425 Austin, Texas 78741

EDUCATION:

L.C. Anderson High School, Austin, Texas High School Diploma - Class of 2008

Austin Community College Major: Paralegal 2008 - Present

EMPLOYERS:

September 2014-Present

Employer:

Webb & Webb, Attorneys at Law

Position:

Paralegal

November 2013-August 2014

Employer:

Dorset Johnson & Swift, LLP

Position:

Office Administrator/Legal Assistant

LEGAL SECRETARIAL AND LEGAL ASSISTANT EXPERIENCE:

- Draft memorandums, correspondence and other legal documents;
- · Organize and maintaining files and client database;
- Schedule appointments and meetings and maintain calendars for attorneys and office staff;
- Serve as liaison for office inquiries and vendors, including information technology ("IT") support services;
- Maintain office supplies and manage supply ordering and deliveries;
- Litigation support, including legal research and obtaining public and private records from agencies, courts, medical offices and other entities;
- Assist with preparation of position statements, pre-filed testimony, trial and hearing exhibits, and discovery requests (Admissions, Interrogatories and Request for Production of Documents);
- Assist with compiling discovery responses in civil litigation, employment claims, contested case hearings, administrative law, probate, guardianship, and breach of contract matters.
- Assist lawyers with every aspect of preparations for trial and/or contested case hearing.

SKILLS/QUALIFICATIONS:

- 1. Over seven (7) years of experience as an administrative assistant/legal assistant;
- 2. Excellent communication skills and ability to work effectively with others in a fast paced work environment;
- 3. Proficient in the use of variety of software including Microsoft Office and specialized on-line database systems; and
- 4. Ability to handle multiple tasks, including prioritizing as needed to meet deadlines.

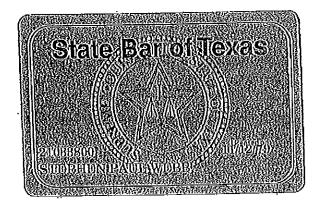
LICENSES/CERTIFICATIONS:

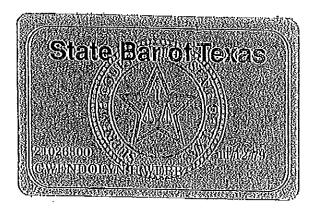
Notary Public for the State of Texas- Commission Expires 12/2021

PEER REVIEW RATINGS, AWARDS AND RECOGNITIONS FOR EXPERIENCE

Stephen P. Webb and Gwendolyn Hill Webb have received the following honors and accolades in the last five (5) years in recognition of ratings by their peers who are practicing attorneys and judges:

- 1. Stephen P. Webb and Gwendolyn Hill Webb AV Preeminent Lawyers, 2018 by Lawyers.com;
- 2. Stephen P. Webb 2018 20th year anniversary of AV Preeminent Rating, the highest possible peer review rating in legal ability and ethical standards by Martindale Hubbell;
- 3. Stephen P. Webb and Gwendolyn Hill Webb 2013, 2014, 2015, 2016, 2017, and 2018 AV Preeminent Attorney, the highest possible peer review rating in legal ability and ethical standards by Martindale Hubbell;
- 4. Stephen P. Webb and Gwendolyn Hill Webb America's Most Honored Professional 2017, Top 1%, based on Martindale-Hubbell peer review ratings on legal ability and ethical standards;
- 5. Stephen P. Webb and Gwendolyn Hill Webb -2017 AV Preeminent Attorney, Judicial Edition, the highest possible peer review rating in legal ability and ethical standards by Martindale Hubbell based on judicial ratings.
- 6. Stephen P. Webb and Gwendolyn Hill Webb -2016 Martindale-Hubbell Top Rated Lawyers in Energy/Environmental/Natural Resources.
- 7. Stephen P. Webb and Gwendolyn Hill Webb 2016 Martindale-Hubbell Texas Top Rated Lawyers; and
- 8. Gwendolyn Hill Webb 2016 Texas Top Rated Lawyers: Women Leaders.





DISPUTE RESOLUTION CENTER **AUSTIN, TEXAS**

hereby certifies that

Gwendolyn Hill Webb

has completed our 30-hour

Advanced Family Mediation Course

in compliance with the Alternative Dispute Resolution Procedures Act Texas Civil Prac. & Rem Code Sec. 154.052

This course meets the standards of The Texas Mediation Trainers Roundtable

JULY 22, 23, 24, 25, 2014

DIRECTOR OF TRAINING

DISPUTE RESOLUTION CENTER



This is to certify that

Gwendolyn Hill Webb

Has successfully completed the academic course for

Mediation Training

(exceeds 40 hours of classroom training in dispute resolution techniques SB# 1436 § 154.052)

Glenn C. Currier, M.A.

Professor of Sociology and Dispute Resolution

El Centro College/DCCCD

October 11, 2003

Date

TAB 6-PRIOR EXPERIENCE

TAB 6 – PRIOR EXPERIENCE

WEBB & WEBB'S DECADES OF SERVICE TO GOVERNMENTAL ENTITIES

The resumes of Stephen P. Webb and Gwendolyn Hill Webb are included in this Tab 6.

Webb & Webb's historic practice areas include representing and advising governmental entities on administrative law and regulatory law generally, and in the specific area of water law and water district relationships; utility regulation; city code enforcement; infrastructure financing contracts, employment law; oil and gas regulations; school law and special education; and general business regulatory litigation. The nature of Webb & Webb's practice has included a unique blend of legal roles: advisor and advisory board member, administrative law judge, transactional lawyer and negotiator, and litigator.

Webb & Webb has specific experience representing the following governmental entities:

- 1. City of Dallas (Water rights and utility rate representations);
- 2. City of Austin (bid protests related to municipal solicitations and procurement of goods and professional services, water utility rate matters and utility franchise negotiations, contract compliance; M/WBE Ordinance compliance, Independent Hearing Officer for code compliance, animal control, water and electric utility billing and conservation, and residential and commercial security alarm service issues);
- 3. City of Mont Belvieu (environmental regulatory matters concerning oil and gas disposal in the Barbers Hill Salt Dome);
- 4. Texas Board of Insurance (Insurance Defense matters involving pending litigation of insurance companies in receivership);
- 5. Kingsland Water Supply Corporation (governance, including matters related to the Texas Open Meetings Act, employment, billing issues, financing and easement terms and conditions);
- 6. Texas Education Agency (Special Education Hearing Officers and Mediators); and
- 7. Dallas Independent School District (General non-litigation legal services as requested).

WEBB & WEBB'S COMMITMENT TO PUBLIC SERVICE

Webb & Webb was founded in February 1991 after both Stephen P. Webb and Gwen Webb had served over ten (10) years as government attorneys. Both Mr. Webb and Ms. Webb are committed to using their wealth of expertise gleaned as government attorneys for the benefit of

governmental entities and private businesses seeking governmental and regulatory assistance. Mr. Webb, in particular, is eager to continue his work for the City of Austin Purchasing Office in procurement matters. Mr. Webb and Ms. Webb's skills of advocacy, negotiation, transactions, conciliation, and being part of an executive management team have been honed in the fire of experience based on active citizen participation in their local government.

Mr. Webb values his experience directing and organizing the efforts of legal teams working to address the many administrative hearing issues facing cities. Mr. Webb and Ms. Webb's legal advice and counsel has been relied on by many government entities over the course of his career. Additionally, as much as legal representation includes involvement in adversarial processes and representing city interests as opposed to private interests, Ms. Webb's skills also extend to mediation, and public financing and transactions. It is a guiding principle of Webb & Webb that, in many cases, the best resolutions are those crafted by the parties to any dispute, as compared to those resolutions imposed on them by regulating authorities. Ms. Webb has conducted and participated in many mediations since 2003, when she began serving as a Special Education Mediator under contract with Texas Education Agency. Mr. Webb has significant applicable experience in resolving procurement and city employment issues through administrative hearings.

HIGHLIGHTS OF SUCCESSFUL LEGAL CAREERS IN GOVERNMENT SERVICE

Stephen P. Webb

As shown on his Qualifications Statement included in Tab 6, highlights of Mr. Webb's professional career include public service as a hearings examiner and supervisor of hearings examiners, independent hearing officer, Special Education Hearing Officer (which functions as a specialized type of administrative law judge), applicant and protestant in many government proceedings including rulemaking and contested case hearings. Mr. Webb has also served as counsel to Commissioners and City Council Members especially on purchasing, Minority and Women Owned Business certification and compliance, employment law, and oil and gas related matters, such as disposal of waste and well safety. Throughout his legal career, Mr. Webb has also been actively involved in litigation concerning environmental issues and employment.

Stephen P. Webb's References

Mr. Douglas Jansky, Administrative Hearing Coordinator-Legal Division City of Austin/Austin Energy

1520 Rutherford Lane, Building 1

Austin, Texas 78756

Telephone: 512-974-8547

Mr. Jansky is the hearing coordinator for the City of Austin Code Compliance hearings. Mr. Webb has provided independent hearing officer services to Mr. Jansky and the City's Code Compliance office. Mr. Webb has conducted a number of hearings and issued written Orders, including opinions in highly contested Short Term Rental violations.

Mr. James Scarboro

City of Austin Purchasing Officer

124 W. 8th Street, Austin, Texas 78701

Telephone: 512-974-3491

Mr. Scarboro is the current Purchasing Officer for the City of Austin. Mr. Webb has provided the services of an independent hearing officer to the City of Austin through the City's Purchasing Office for over 20 years. These services have related to procurement bid protests by unsuccessful bidders to a variety of City projects. The hearings have required Mr. Webb to hear testimony, review evidence and recommend a resolution of the dispute to the City Manager.

Mr. Grady Randle, General Counsel for City of Mont Belvieu Memorial City Plaza II 820 Gessner Road, Suite 1570 Houston, Texas 77024

Telephone: 281-657-2000

Mr. Randle is the current General Counsel for the City of Mont Belvieu. Mr. Webb has been advising the City Council of the City of Mont Belvieu for over 25 years on regulatory matters pertaining to the underground storage of hydrocarbons in salt domes. Mr. Webb has also represented the City in administrative contested cases and rule makings at the Railroad Commission of Texas, State Legislature, and in certain State Courts in Texas.

Gwendolyn Hill Webb

As shown on her Qualification Statement included in this Tab 6, highlights of Ms. Webb's professional career include public service as a hearings examiner and supervisor of hearings examiners, independent hearing officer, Special Education Hearing Officer (which functions as a specialized type of administrative law judge), staff attorney, advocate, applicant and protestant in many government proceedings including rulemaking and contested case hearings. Ms. Webb has also served as counsel to environmental Commissioners and City Council Members and has been involved in administrative law, government litigation and intergovernmental affairs throughout her legal career.

Gwendolyn Hill Webb's References

Mr. Denis W. Qualls, P.E., D. WRE. Senior Program Manager, Planning Dallas Water Utilities 1500 Marilla Street, 4AS Dallas, TX 75201 Phone: (214) 670-3843

Mr. Qualls manages the water rights regulatory program for Dallas Water Utilities. He has worked with Ms. Webb for over twelve (12) years, coordinating and directing the permitting program from the Texas Commission on Environmental Quality. Ms. Webb and Mr. Qualls have actively participated in TCEQ's water availability program and have obtained through contracts and permits with other water suppliers millions of gallons of water per day for use in the North Central Texas region.

Ms. Jo. M. Puckett, P. E. Assistant City Manager (Interim) City of Dallas 1500 Marilla Street, 4DN Dallas, TX 75201 Phone (214)670-1204

Jody Puckett is the former Director of Dallas Water Utilities who is now serving Dallas on an interim basis as an Assistant City Manager, in recognition of her knowledge and experience in working with the Dallas City Council. Gwen Webb has worked with Jody Puckett for over a decade in connection with the City of Dallas water rights regulatory program, including planning, permitting and contracting for new water supplies and forming regional partnerships.

Ms. Terry S. Lowery Director (Interim) Dallas Water Utilities 1500 Marilla Street, 4AS Dallas, TX 75201

Phone: (214) 670-3843

Ms. Lowery is now Director (Interim) of Dallas Water Utilities, after having worked for Dallas Water Utilities since 1991 and being promoted to the Assistant Director for Business Operations for Dallas Water Utilities in 2010. Ms. Lowery has worked with Ms. Webb on numerous management and budget items, including the terms and conditions of contracts between the City of Dallas and other water suppliers, such as the Sabine River Authority.

FIRM CAPACITY AND CAPABILITY

Webb & Webb possesses the necessary administrative support and office equipment to perform duties as Hearing Officers. Webb & Webb maintains an office with the following equipment: multiple telephones and telephone lines which are monitored during business hours by multiple assistants or an answering machine; 2 facsimile machines with independent numbers; multiple personal computers with internet service; Windows and Microsoft Office compatible software; electronic mail addresses; and access to both physical and digital law libraries. Webb & Webb also employs experienced paralegal and legal assistant staff with years of experience serving clients and participating in legal proceedings at every level of government and across a variety of roles.

The attorneys at Webb & Webb have always worked in administrative and regulatory law, providing legal counsel to government officials, and assisting and working as members of non-governmental boards and commissions throughout their legal careers. Set out in the attached Qualifications Statements of Stephen P. Webb and Gwendolyn Hill Webb are specific related experience and projects.

Stephen P. Webb is highly experienced in handling procurement related administrative matters for the City of Austin, and his qualifications exceed the minimal RFQS qualifications based on the fact that: (1) he has been a procurement professional with experience in conducting actual administrative bid protest hearings for the City of Austin for the past 17 years; and (2) he has been actively licensed to practice law in the State of Texas since November, 1979.

Gwen Webb is an experienced attorney, certified mediator, former Special Education Hearing Officer, former Supervising Attorney and former Intergovernmental Affairs Officer for the City of Austin who is familiar with the expectations of a City Council in the handling of matters which require due process, including a public or an administrative hearing, and a written decision, ruling or final action in the form of an ordinance. Ms. Webb's lengthy career as a lawyer has involved administrative law at all government levels, including practice before or on behalf of the Federal government (Civil Aeronautics Board, Federal Savings and Loan Insurance Corporation), the State of Texas (Texas Aeronautics Commission, Texas Department of Water Resources, Texas Water Commission, Texas Natural Resources Conservation Commission, Texas Commission on Environmental Quality, and Texas State Board of Insurance, and local government (City of Austin, City of Dallas, City of Mont Belvieu, and City of Princeton, all in Texas).

,		
,		
•		
	,	

STATEMENT OF QUALIFICATIONS AND RELATED PROJECT EXPERIENCE OF STEPHEN P. WEBB AND GWENDOLYN HILL WEBB FROM 2003 FORWARD

STEPHEN P. WEBB

Stephen P. Webb is a recognized expert in procurement compliance issues and community participation in solicitations and certifications by public entities. Ms. Webb provides the following summary of her project experience, supplementing her resume with more specific work experience.

<u>CITY OF AUSTIN INDEPENDENT HEARING OFFICER</u> 2000 – Present

Mr. Webb began working as an Independent Hearing Officer for the City of Austin in the late 1990s, when he heard disputes involving the City of Austin's selection of a contractor associated with the construction of the Austin Bergstrom International Airport. Mr. Webb was a member of the professional team led by D. J. Miller and Associates of Atlanta, Georgia which provided the Disparity Study which provided the basis for establishing goals for participation in City of Austin contracts by women and minority owned businesses. Stephen Webb has actively served as an Independent Hearing Officer for the City of Austin since 2000, hearing dozens of cases involving bid protests, M/WBE Ordinance compliance, anti-lobbying ordinance compliance, and compliance with competitive procurement regulations.

Since 2016, Mr. Webb has also served as an Independent Hearing Officer for Austin Energy, hearing cases regarding violations of the City Code and any associated state law regarding property maintenance, short term rentals, animal control, water, sewer and electric utility accounts and billing, and alarm service.

CITY OF DALLAS COMMUNITY PARTICIPATION IN INTEGRATED WATER TRANSMISSION PIPELINE 2010

Stephen P. Webb assisted the City of Dallas in developing programs for women and minority owned businesses in the design and construction of the Integrated Water Transmission Pipeline, which involved an Interlocal Cooperation Agreement with Tarrant Regional Water District issuing bonds under contract with the City of Dallas. Mr. Webb worked with the team members to ensure that women and minority owned businesses would have the opportunity to participate in this \$2 billion water infrastructure project.

CITY OF AUSTIN GAS UTILITY FRANCHISE AGREEMENTS

2005 – 2007 (OneOK, Inc. doing business as Texas Gas Service);

2006 – 2008 (ATMOS Energy Corporation)

Mr. Webb's experience and past working relationship with the staff at the Railroad Commission of Texas assisted him in providing legal services to the City of Austin in contract negotiations for gas franchise agreements, including reviewing the impact of franchise terms and conditions on users, especially the University of Texas at Austin. Mr. Webb was instrumental in allowing the Austin City Council to pass a franchise ordinance initiating the application of the franchise fee on the value of gas transported for others,

<u>SPECIAL EDUCATION HEARING OFFICER FOR THE TEXAS EDUCATION AGENCY</u> 1994 – 2013

Stephen P. Webb was a special education hearing officer (SEHO) for due process hearings pursuant to the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et. seq. ("IDEA"), beginning in 1994. As a SEHO, he presided over many due process hearing proceedings at school districts across the State of Texas. Working as a SEHO required Mr. Webb to research and apply statutes, case law and regulations to disparate facts and unprecedented circumstances. Mr. Webb's decisions implemented IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts. Mr. Webb has obtained extensive experience with the Texas Rules of Civil Procedure, the administrative rules that govern hearings held pursuant to IDEA during his tenure as a Special Education Hearing Officer. Mr. Webb issued over 62 decisions in his tenure as a Special Education Hearing Officer for the Texas Education Agency. His decisions in due process hearings have been upheld by several decisions of U.S. district courts, the U.S. Fifth Circuit Court of Appeals, and one decision by the United States Supreme Court.

REPRESENTATION OF VARIOUS CLIENTS IN MATTERS RELATED TO EMPLOYMENT DISPUTES

Present

Mr. Webb specializes in employment law generally and the Texas Whistleblower Act, specifically. Mr. Webb has handled multiple cases on behalf of public employees who have asserted claims against their employers for violations of their legal rights. Mr. Webb would be able to assist the City of Lago Vista in handling such potential claims against the City, including advice on avoiding or minimizing such potential claims.

GWENDOLYN HILL WEBB

Gwen Webb is a recognized expert in administrative law, especially the law and regulations applicable to water utility planning, financing and permitting. Ms. Webb provides the following summary of her project experience, supplementing her resume with more specific work experience.

CITY OF AUSTIN GAS UTILITY FRANCHISE AGREEMENTS

2005 – 2007 (OneOK, Inc. doing business as Texas Gas Service);

2006 – 2008 (ATMOS Energy Corporation)

Webb & Webb provided legal services in contract negotiations for gas franchise agreements. She advised the Austin City Council on gas utility franchise issues, including initiating the application of the franchise fee to the value of gas transported for others, and the impact of franchise terms and conditions on users, especially the University of Texas at Austin.

CITY OF DALLAS WATER RIGHTS PERMITTING PROGRAM 1993 – Present

Gwen Webb continues to act as lead counsel for Dallas in water rights permitting, pursuing additional authorizations for Dallas' municipal water supply, and defending Dallas' water rights versus other potential appropriators in accordance with applicable law. She has obtained new water rights for Dallas' in the amount of over 504 MGD to satisfy water supply demands in the growing North Texas region. She works with Dallas Water Utilities staff to coordinate Dallas' water supply program with other regional water suppliers to ensure that all regional water needs are met in order to support continued economic growth. Gwen Webb has acted as lead counsel in contested case hearings, district court declaratory judgment cases, and appeals of orders of the Texas Commission on Environmental Quality and predecessor agencies.

Gwen Webb has also worked with Dallas Water Utilities staff on water supply planning issues from a regulatory and legal standpoint in the 2015 Dallas Long Range Water Supply Plan. She was the legal subcontractor to the Austin, Texas office of HDR Engineering, Inc.

CITY OF DALLAS WATER UTILITIES FINANCING 1995 - Present

Gwen Webb developed terms and conditions for regional water supply contracts regarding development, financing and operation of major water supply reservoirs. She worked with team of lawyers to develop terms and conditions for the study and development of raw water transmission facilities from the State of Oklahoma and from Lake Palestine, in partnership with Tarrant Regional Water District and other North Texas water suppliers, including North Texas Municipal Water District. She has also worked with Dallas Water Utilities staff to develop and review terms and

conditions of contracts under the Texas Interlocal Cooperation Act and to ensure compliance with City of Dallas and State of Texas purchasing and procurement requirements. She addressed and negotiated issues including regulatory and legal compliance, capital finance, project development and management, and ongoing facilities operations.

Gwen Webb worked to develop renewal terms and conditions for the October 1, 1981 Lake Fork Water Supply Contract and Conveyance between the City of Dallas and the Sabine River Authority of Texas ("SRA") regarding the continued operation of Lake Fork reservoir and capital and operations and maintenance costs for Dallas' water from Lake Fork, owned by SRA, when Dallas paid all the initial reservoir construction costs. The litigation concerning that water rate before Texas State District courts in Travis County and Orange County, and before the Public Utility Commission of Texas (in which Gwen Webb had a very limited role) has now been resolved by agreement of all parties.

CITY OF DALLAS GAS UTILITY RATE DISPUTES

1999 – 2001 (Gas Utilities Docket No. 9145, TXU Generation Company, LLC, Dallas Rate increase); 2003 – 2004 (Gas Utilities Docket No. 9400, TXU Generation Company, LLC,

System-Wide Rate Increase)

Webb & Webb contested a proposed rate increase by gas supplier TXU Generation Company, LLC in Railroad Commission of Texas, Gas Utilities Division Docket 9145. Through its participation in the contested case hearing at the Railroad Commission, Dallas was able to reduce the requested rate increase significantly, with the assistance of DUCI (Diversified Utility Consultants), Inc. of Austin, Texas.

Webb & Webb provided prehearing and motions practice services in Railroad Commission of Texas, Gas Utilities Division Docket 9400, a contested case hearing in which Dallas contested the applicability of proposed statewide rates to the City of Dallas, Texas.

<u>CITY OF AUSTIN WATER AND WASTEWATER COMMISSION</u> 2008-2012

Gwen Webb was appointed by Mayor Pro Tem Sheryl Cole to review actions by Austin Water Utility in planning, developing, and implementing Austin City Council goals and directives for the utility. Ms. Webb reviewed proposed Austin City Council action items, including purchasing and procurement, utility service extension, finance and bond issuances, and utility policies regarding developer contracts and service extensions, and the City's consent to the creation or contract amendments regarding of new special districts. She also reviewed and considered the contract for the construction of Water Treatment Plant No. 4 through the use of the Construction Manager at Risk

procurement method. Gwen Webb served on the Budget Committee, served as Vice-Chair and then Chair of the Water and Wastewater Commission during her term.

CITY OF AUSTIN WATER, WASTEWATER AND RECLAIMED WATER RATE DISPUTE BY FOUR (4) WHOLESALE WATER DISTRICT CUSTOMERS 2013 – 2015

Gwen Webb led the City of Austin's participation in the contested case hearing regarding the City of Austin wholesale water and wastewater rates to four (4) water districts outside the city corporate limits. Throughout this lengthy contested case, Webb & Webb provided the legal services necessary to develop and pursue the City's position, including participation in the contested case hearing from discovery through consideration by the Public Utility Commission of Texas, appeals to the Travis County State District court for injunctive and declaratory judgment relief, and negotiation of terms and conditions of continued water and wastewater utility service.

CITY OF AUSTIN WATER AND WASTEWATER RATE DISPUTE BY RIVERPLACE HOMEOWNERS ASSOCIATION 2015

Gwen Webb led the City of Austin's participation in the contested case hearing by River Place Municipal Utility District water and wastewater retail ratepayers. She acted as lead counsel with direction from the Austin Law Department during the initial prehearing conferences through motions, discovery and settlement.

SPECIAL EDUCATION HEARING OFFICER AND MEDIATOR FOR THE TEXAS EDUCATION AGENCY 2004- 2014

Gwen Webb was a special education hearing officer (SEHO) for due process hearings pursuant to the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et. seq. ("IDEA"), beginning in 1994. As a SEHO, she presided over many due process hearing proceedings at school districts across the State of Texas. Working as a SEHO required Ms. Webb to research and apply statutes, case law and regulations to disparate facts and unprecedented circumstances. Ms. Webb's decisions implemented IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts. Mr. Webb has obtained extensive experience with the Texas Rules of Civil Procedure, the administrative rules that govern hearings held pursuant to IDEA during his tenure as a Special Education Hearing Officer.

Gwen Webb also served as a Special Education Mediator for TEA from 2004 through 2014. Although Gwen Webb has conducted 25 mediations in the last 5 years, her mediation work was very limited in 2014 and 2015, when she was lead counsel in the appeal of four water districts of City of Austin Water and Wastewater Rates before the Public Utility Commission of Texas. As a mediator, she mediated approximately 65 disputes regarding the special education programs of children with disabilities

across the State of Texas from 2004 forward. The experience she gained as a mediator in these special education mediations has added important negotiating skills to her legal experience.

ADMINISTRATIVE PROCEDURE ACT CONTESTED CASE HEARINGS 1979 – Present

Gwen Webb participated in contested case hearings as a hearings examiner, hearings officer and/or advocate for State agency staff before government agencies, including the Texas Aeronautics Commission, the Civil Aeronautics Board, the Texas Commission on Environmental Quality and predecessor agencies, the Texas Education Agency, and the Railroad Commission of Texas under the Texas or Federal Administrative Procedure Act. Her participation included filing motions and briefs, making and ruling on discovery, evidence, objections and other motions regarding substantive issues of evidence, water law, and administrative law throughout legal career.

Exhibit C

WEBB & WEBB

ATTORNEYS AT LAW

2028 EAST BEN WHITE BLVD, SUITE 425 AUSTIN, TEXAS 78741

STEPHEN P. WEBB GWENDOLYN HILL WEBB TELEPHONE: 512-472-9990

FACSIMILE: 512-472-3183

September 5, 2018

Ms. Claudia Rodriquez
Procurement Specialist IV
City of Austin - Purchasing Office
124 West 8th Street
Austin, Texas 78701
Via Email; Claudia R. Rodriquez@austintexas.gov

Re: Price Proposal for RFQS 7400-CRR0305

Dear Ms. Rodriquez,

This letter is in response your August 14, 2018, email requesting for submission of a written cost proposal for the above referenced RFQS related to Hearing Officers services. Webb & Webb, Attorneys at Law ("Webb & Webb") will provide Hearing Officers services upon request by the City of Austin. The City of Austin will be invoiced after the Decision of the Hearing Officer has been issued.

Webb & Webb proposes that Hearing Officers services be billed as follows:

1. Hearing Officers services for hearings held by the Purchasing Office, Austin Housing Finance Corporation ("AHFC"), Capital Contracting Office ("CCO") and the Small and Minority Business Resources ("SMBR") Department are proposed to be billed at a flat rate of \$4,000.00 per case assuming a maximum of fifteen (15) hours is needed to complete the decision.

Purchasing hearings and hearings involving SMBR are known to our office. The proposed flat rate represents a discount from the last three hearings handled for Purchasing. It is assumed that AHFC and CCO hearings will be similar to Purchasing hearings.

2. Hearing Officers services for hearings held by the City's Equal Opportunity and Fair Housing Office are proposed to be billed at an hourly rate of \$250.00; and

3. Additional expenses incurred (such as copy charges, postage, etc.) will be documented and invoiced separately from legal services.

Inquiries regarding billing and billing procedures are invited in order to address any concerns you may have.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

WEBB & WEBB, ATTORNEYS AT LAW

2028 E. Ben White Blvd. Suite 425

Austin, Texas 78741

Tel:

(512) 472-9990

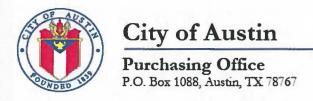
Fax:

(512) 472-3183

s.p.webb@webblaw.com

STEWENP. WEBB

State Bar No. 21033800



October 4, 2018

Sherry Wetsch 14103 Manderly Dr. Houston, TX 77077

Ms. Sherry Wetsch:

The City has approved the execution of a contract with your company for Hearing Officer Services in accordance with the referenced solicitation.

Responsible Department:	Financial Services Department- Purchasing Office
Department Contact Person:	Yolanda Miller
Department Contact Email Address:	Yolanda.Miller@austintexas.gov
Department Contact Telephone:	(512) 974-2033
Responsible Department:	Department of Small & Minority Business Resource (SMBR)
Department Contact Person:	Edward Campos
Department Contact Email Address:	Edward.campos@austintexas.gov
Department Contact Telephone:	(512) 974-7206
Responsible Department:	Financial Services Department-Capital Contracting Office (CCO)
Department Contact Person:	Aiden Cohen
Department Contact Email Address:	Aiden.cohen@austintexas.gov
Department Contact Telephone:	(512) 974-1929
Responsible Department:	Neighborhood Housing & Community Development (NHCD)
Department Contact Person:	Alan Fish
Department Contact Email Address:	Alan.Fish@austintexas.gov
Department Contact Telephone:	(512) 974-1054

Contractor Name:	Sherry Wetsch
Contract Number:	7400-PA180000085
Contract Period:	Initial term of two years
Dollar Amount	\$70,000 (\$35,000 each year) to be shared between both Contractors
Extension Options:	Three, 12-month extension options ea at \$35,000
Requisition Number:	17101800041
Solicitation Type & Number:	RFQS 7400-CRR0305

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Claudia Rodriquez

Procurement Specialist IV

City of Austin

Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN ("City") AND Sherry Wetsch ("Contractor")

Sherry Wetsch ("Contractor" for

Hearing Officer Services Contract Number MA 7400-PA180000085

The City accepts the Contractor's Offer (as referenced below) for the above requirement and enters into the following Contract.

This Contract is between Sherry Wetsch having offices at 14103 Manderly Dr. Houston, TX 77077 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number 7400-CRR0305.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 Exhibit A-The City's Solicitation, Request for Qualifications (RFQS), 7400-CRR0305 including all documents incorporated by reference
- 1.1.3 Exhibit B-Sherry Wetsch's Response to RFQS 7400-CRR0305, including all subsequent clarifications
- 1.1.4 Exhibit C-Sherry Wetsch's Pricing Offer, dated September 5, 2018, including subsequent clarifications
- 1.2 <u>Order of Precedence</u>. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This Contract
 - 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
 - 1.2.3 The Contractor's Response as referenced in Section 1.1.3, including subsequent clarifications.
 - 1.2.4 The Contractor's Pricing Offer as referenced in Section 1.1.4, including subsequent clarifications.

1.3 **Term of Contract.**

1.3.1 The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 24 months.

Sherry Wetsch Contract 1

- 1.3.2 The Contract may be extended automatically beyond the initial term for up to three (3) additional 12-month periods at the City's sole option unless the Contractor is notified in writing no less than 30 days prior to the contract's expiration.
 - 1.3.2.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
 - 1.3.2.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).
 - 1.3.2.3 This is a 24-month Contract. Prices are firm for the first twelve (12) months.

1.4 **Compensation**.

- 1.4.1 The Contractor shall charge \$2,500 per hearing per Exhibit B, Pricing Offer.
- 1.4.2 The Contractors shall be paid a total Not-to-Exceed amount of \$70,000, to be shared between both Contractors, for the initial Contract term of 24 months and \$35,000 for each extension option. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.
- 1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

Sherry Wetsch Contract 2

SHERRY WETSCH

CITY OF AUSTIN

Printed Name of Authorized Person

Signature

Date:

Claudia Rodriquez
Printed Name of Authorized Person

Signature

Procurement Specialist IV

Title:

<u>List of Exhibits:</u>
Exhibit A - The City's Solicitation, Request for Qualifications (RFQS), 7400-CRR0305
Exhibit B - Contractor's Response to RFQS 7400-CRR0305
Exhibit C - Contractor's Pricing Offer



CITY OF AUSTIN, TEXAS

Purchasing Office REQUEST FOR QUALIFICATION STATEMENTS (RFQS) OFFER SHEET

SOLICITATION NO: 7400-CRR0305

COMMODITY/SERVICE DESCRIPTION: Hearing Officers

DATE ISSUED: Monday, January 22, 2018

REQUISITION NO.: 17101800041

COMMODITY CODE: 96105

PRE-RESPONSE CONFERENCE TIME AND DATE: Monday, Jan 29th, 2018 at 3:00pm-4:00pm. Conference Bridge Line: 605-472-

5663 Access Code: 398238

LOCATION: Purchasing Office Conference Room 124 W. 8th St

Austin, TX 78701, 3rd Fl.

FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT THE FOLLOWING AUTHORIZED CONTACT PERSON:

Claudia Rodriquez Phone: 512-974-2959

Email: ClaudiaR.Rodriquez@austintexas.gov

RESPONSES <u>DUE PRIOR TO</u>: Tuesday, February 13, 2018 at 2:00pm

RESPONSE OPENING TIME AND DATE: Tuesday, February 13,

2018 at 3:00pm

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET

RM 308, AUSTIN, TEXAS 78701

LIVE SOLICITATION OPENING ONLINE: For RFQS's, only the names of respondents will be read aloud

For information on how to attend the Solicitation Closing online, please select this link:

http://www.austintexas.gov/department/bid-opening-webinars

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service	
City of Austin	City of Austin, Municipal Building	
Purchasing Office-Response Enclosed for Solicitation # 7400- CRR0305	Purchasing Office-Response Enclosed for Solicitation # 7400-CRR0305	
P.O. Box 1088	124 W 8 th Street, Rm 308	
Austin, Texas 78767-8845	Austin, Texas 78701	
	Reception Phone: (512) 974-2500	

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY (FLASH DRIVE) OF YOUR RESPONSE
SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT

Offer Sheet

Solicitation No. RFQS CRR0305

Page | 1

58,6-18

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.		
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	8
0500	SCOPE OF WORK	4
0600	RESPONSE PREPARATION INSTRUCTIONS & EVALUATION FACTORS	4
0700	REFERENCE SHEET – Complete and return	
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION—Complete and return	
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	
0845	LIVING WAGES CONTRACTOR CERTIFICATION-Complete, sign and return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM - Complete & return	
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3
Attachment A	Exceptions Document	1

^{*} Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

\$ 2.6.18

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Sherry Wetsch
Company Name: Sherry Wetsch Company Address: 14103 Manderly Drive
City, State, Zip: Houston, Texas 77077
Federal Tax ID No.
Printed Name of Officer or Authorized Representative: Sherry Wetsch
Title: Attorney
Signature of Officer or Authorized Representative:
Date: - 2-6-78
Email Address: 5 Wetsch & flash, net
Phone Number: 281 - 558 - 35031

* Qualifications Statement must be submitted with this signed Offer sheet to be considered for award

Page | 3

SHERRY R. WETSCH

Attorney, Arbitrator, Mediator, Referee 14103 Manderly Drive, Houston, Texas 77077

TEL: 281-558-3503 E-MAIL: swetsch@flash.net Fax: 281-558-3489 WETSCHLAW.COM

Licensed to Practice Law in Texas, North Dakota and Missouri

February 6, 2018

City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation #7400-CRR0305
124 W. 8th Street, Room 308
Austin, Texas 78701

RE: Request for Qualification Statement (RFQS) 7400 CRR0305 Open Date/Time: February 14, 2018 @ 2:00 p.m.

Dear Sir/Madam:

This letter and enclosures constitutes my response to the above identified RFQS for Citywide Hearing Officers. As part of my response I have enclosed the following:

Tab 1.

Offer Sheet
Qualification Statement
Writing Sample
Reference Sheet
Non-Discrimination & Non-Retaliation Certification
Living Wages Contractor Certification
Subcontracting/Sub-Consulting Utilization Form
Subcontracting/Sub-Consulting Utilization Plan
Exceptions

Tab 2
Authorized Negotiator and Business Organization

Tab 3 Project Approach

Tab 4
Writing Sample

Tab 5
Project Management Structure & Personnel

Tab 6 Prior Experience Narrative

1 Response of Sherry Wetsch

Tab 7 Certificates of mediation training

Tab 8 HUB Certificate

Tab 9

Flash drive of PDF copy of the statement/response of Sherry Wetsch

Tab 10 RFQS 7400 CRR0305

Business Organization

The name of my company is Sherry R. Wetsch. I am a HUB and intend to perform the Hearing Officer services myself. I do not intend to subcontract any of the services. I am a sole proprietor. Although I live in Houston, it is customary for me to travel offsite to perform professional services. In 1984 I became licensed to practice law in North Dakota. I became licensed in Texas in 1992. My telephone and fax lines are monitored, as is my e-mail.

Project Approach

As a contractor for neutral services with numerous government agencies, I have experience complying with the terms of each contract, including submissions of work product, compliance with deadlines, and submissions of invoices. I hereby certify that I will comply with the terms and obligations as outlined in the above identified RFQS. I also certify that I will comply with all applicable rules and regulations of Federal, State and Local governing entities. I believe that I meet the qualifications and can provide the services as outlined in the RFQS. My work schedule is flexible and can accommodate requests for services as the need arises.

Prior Experience

I have a satisfactory record providing neutral services for numerous governmental entities. I have been arbitrating and mediating cases since 1996, and have served as a neutral on in excess of 2000 cases, in both the public and private sectors. Parties have included numerous governmental and regulatory entities on federal, state and local levels. These files have included employment and labor disputes, property tax issues, contract disputes, special education related issues, transportation and consumer related complaints, securities disputes, and regulatory matters.

I started my legal career in 1984 as an attorney for the U.S. Department of the Army. From 1988 to 1991, I worked as an Assistant Prosecuting Attorney. I thereafter went into private practice. Since 1996 my practice has centered on serving as a third- party neutral for and through governmental and regulatory entities.

I currently serve as a hearing officer and mediator for TWC. From 1999-2002 I served as 2 Response of Sherry Wetsch

a temporary ALJ for SOAH. Some of the panels through which I have performed arbitration services include AAA, FINRA, FMCS, TXDOT, NMB and the TX State Comptroller's Office. The assignments through these organizations are and were on an as needed basis.

As an ALJ, arbitrator and hearing officer, I have demonstrated my ability to provide the services outlined in the RFQS. I have presided over hundreds of cases in person, over the telephone and through written submissions. I have experience dealing with both pro se parties as well as parties who are represented by counsel. I have explained hearing procedures, administered oaths and listened to testimony, ruled on the admissibility of evidence and permitted parties to present evidence. I have experience overseeing discovery matters, and all aspects of an evidentiary hearing such as presentation of evidence and examination of witnesses. I have also prepared determinations containing findings and recommendations.

I have mediated EEO related employment disputes for the United States Postal Service since 1999. I served as a neutral for TXDMV/TXDOT for over ten years on hundreds of cases conducting telephone mediations for them on an as needed basis. Copies of the certificates of various mediation training courses are enclosed. I completed the 40- hour basic mediation training course in 1996. I have performed in excess of 25 mediations during each of the last five years.

As an arbitrator through the Texas State Comptroller's Office, I hear disputes involving commercial and residential property tax appraisal appeals. As a hearing officer and mediator through TWC, regulatory and policy issues have been raised. As a labor arbitrator I have heard disputes involving police and fire departments. Budgets, emergency response time, EMS, staffing, adequacy of investigations, and tax issues have been addressed. In other words, my broad background of experience lends itself to my being able to perform services under this Contract.

Personnel

At this point in time I do not foresee the need to assign anyone to this contract other than myself. I am the only person authorized to negotiate Contract terms and render binding decisions on Contract matters.

If additional information is needed, please contact me. (My website, wetschlaw.com, is also a source of information.) I am willing to meet with you at your convenience to discuss this matter.

Sincerely,

Sherry R. Wetsch

Enclosures

Section 0700: Reference St	neet
Responding Company Name	Sherry Wetseh
and ability to provide the p shall furnish at least 3 com customers to whom the off	ray check references in order to determine the Offeror's experience roducts and/or services described in this Solicitation. The Offeror uplete and verifiable references. References shall consist of feror has provided the same or similar services within the last 5 years. A record of positive past performance.
1. · · Company's Name	Texas Workforce Commission
Name and Title of Contact	Melissa Collins, VR Hearings Coordinator
Project Name	Hearing Officer Services
Present Address	101 E. 15th Street
City, State, Zip Code	Austin, Texas 78778-0001
Telephone Number	(512) 936-3653 Fax Number (512) 463-1426
Email Address	melissa, colling & twc. state. tx. us
2. Company's Name	Texas Department of Housing & Community Afra
Name and Title of Contact	Jeffrey T. Pender
Project Name	Independent Fact Finder
Present Address	221 East "1/th Street
City, State, Zip Code	Austin, Texas 78701
Telephone Number	(5/2) 475-4752 Fax Number (5/2) 469-9606
Email Address	jeff. pender o tahca. Stale. tx. us
3. Company's Name	Monald Jehnson
Name and Title of Contact	Hearing Office Konald Johnson
Project Name	TWC Hearing Offices

Company's Name

Name and Title of Contact

Project Name

Present Address

City, State, Zip Code

Telephone Number

Email Address

Annald Jehnson

Annald Jehnson

Hearing Office Ronald Jehnson

Two C Hearing Officer

6025 Sun hay Drive

Denton, Texas 76028

Telephone Number

City, State, Zip Code

Tonjohn 6300 gol.com

City of Austin, Texas Section 0800 NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Section 0800 Non-Discrimination and

Solicitation No. RFQS CRR0305

Page | 1

Non-Retaliation Certification



Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict."

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 6th day of Foblus, 2018

CONTRACTOR

Authorized Signature

Title

Attorney

Page | 2

Section 0800 Non-Discrimination and Non-Retaliation Certification

Solicitation No. RFQS CRR0305

40 2-6-18

Section 0815: Living Wages Contractor Certification

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$14.00 per hour.

(1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$14.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title
none				
=1				
	* *			, T

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$14.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$14.00 per hour.

Contractor's Name:	Sherry Wetse	h		
Signature of Officer or Authorized Representative:	5 Rivetos	Date:	2-678	Į.
Printed Name:	Sherry Wetsch			
Title	Attorney			

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

	SOLICITATION NUMBER: Hearing Officers SOLICITATION TITLE: RFQS 7400-CRR0305 I do not intend to subcontent any of the services in this contract
_	any of the services in this contract
	INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.
	I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).
	Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:
	 Subcontracting/Sub-Consulting Utilization Form (completed and signed) Subcontracting/Sub-Consulting Utilization Plan (completed)
9	I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.
	Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.
	STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract; STEP TWO: Perform Good Faith Efforts (Check List provided below); STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer: Subcontracting/Sub-Consulting Utilization Form (completed and signed) Subcontracting/Sub-Consulting Utilization Plan (completed) All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below) GOOD FAITH EFFORTS CHECK LIST –
	When using NON-CERTIFIED Subcontractor/Sub-consultants(s), <u>ALL</u> of the following CHECK BOXES <u>MUST</u> be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.
	Contact SMBR. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
	Contact M/WBE firms. Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

$\begin{array}{c} \textbf{MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)} \\ \textbf{PROCUREMENT PROGRAM} \end{array}$

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

	CITATION NUMBER: Hearing Officers CITATION TITLE: RFQS 7400-CRR0305
	Follow up with responding M/WBE firms. Offeror shall follow up with all M/WBE firms that respond to the Offeror's request.
,	Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
	Advertise. Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
	Use a Community Organization. Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

10 L18

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

(Offere	ors may duplicate this	page to add additional Subc	ontractors as needed)
		Subcontractor/Sub-consul	
City of Austin Certified	□ MBE □ WBE	Ethnic/Gender Code:	□ NON-CERTIFIED
Vendor ID Code			
Contact Person		Pho	one Number:
Additional Contact Info	Fax Number: E-mail:		
Amount of Subcontract	\$		
List commodity codes & description of services		e 1	×1.5
Justification for not utilizing a certified MBE/WBE			
	MATERIA MA	Subcontractor/Sub-consul-	tant
City of Austin Certified	MBE WBE	Ethnic/Gender Code:	☐ NON-CERTIFIED
Vendor ID Code			
Contact Person		Pho	ne Number:
Additional Contact Info	Fax Number:	E-mail:	
Amount of Subcontract	\$		
List commodity codes & description of services	(F		
Justification for not utilizing a	9.4		16
certified MBE/WBE			
		1	
	ii Tirura ya sa	SMBR Contact Information	
MBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		☐ Phone OR ☐ Email	
	I acknowledge that	the Offeror HAS	or HAS NOT complied with these
iewing Counselor		Date	
	no the Subcontract	ng/Sub-Consultant Utiliz	zation Plan and Concur Do Not

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

٦.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: Hearing Officers SOLICITATION TITLE: RFQS 7400-CRR0305

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions

a:) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.

b.)Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.

NO,	DO NOT intend to use Subcontractors/Sub-consultants	s.
L	Instructions, Officers that Is not insend to use Cuberstone	i.

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

YES, I DO intend to use Subcontractors /Sub-consultants.

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information
5 herry wetsch
5 herry Wetsch V00000 910657
14103 Mandesly Prive
Houston TX 77077
281-5583503 Email Address Swetschoflashin
NO
☐ YES Indicate one: ☐ MBE ☐ WBE ☐ MBE/WBE Joint Venture

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed Subcontracting/Sub-Consulting Utilization Plan, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the Request For Change form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my Subcontractory Consulting Utilization Plan, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my Request for Change form. I understand that, if a Subcontractor is not listed in my Subcontractor to begin work, unless I first obtain City approval of my Request for Change form.

or allow the Subcontractor to begin work, unless I first obtain City approval of my Request for Change form.

5 herry wetsch

Name and Title of Authorized Representative (Print or Type)

Signature/Date

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

	SOLICITATION NUMBER: Hearing Officers SOLICITATION TITLE: RFQS 7400-CRR0305 I do not intend to subcontent any of the services in this contract
_	any of the services in this contract
	INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.
	I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).
	Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:
	 Subcontracting/Sub-Consulting Utilization Form (completed and signed) Subcontracting/Sub-Consulting Utilization Plan (completed)
-	I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.
	Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.
	STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract; STEP TWO: Perform Good Faith Efforts (Check List provided below); STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer: Subcontracting/Sub-Consulting Utilization Form (completed and signed) Subcontracting/Sub-Consulting Utilization Plan (completed) All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below) GOOD FAITH EFFORTS CHECK LIST –
	When using NON-CERTIFIED Subcontractor/Sub-consultants(s), <u>ALL</u> of the following CHECK BOXES <u>MUST</u> be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.
	Contact SMBR. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
	Contact M/WBE firms. Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

$\begin{array}{c} \textbf{MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)} \\ \textbf{PROCUREMENT PROGRAM} \end{array}$

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

	CITATION NUMBER: Hearing Officers CITATION TITLE: RFQS 7400-CRR0305
	Follow up with responding M/WBE firms. Offeror shall follow up with all M/WBE firms that respond to the Offeror's request.
,	Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
	Advertise. Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
	Use a Community Organization. Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

10 L18

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

(Offere	ors may duplicate this	page to add additional Subc	ontractors as needed)
		Subcontractor/Sub-consul	
City of Austin Certified	□ MBE □ WBE	Ethnic/Gender Code:	□ NON-CERTIFIED
Vendor ID Code			
Contact Person		Pho	one Number:
Additional Contact Info	Fax Number:	E-mail:	
Amount of Subcontract	\$		
List commodity codes & description of services		45 1	× 1.5
Justification for not utilizing a certified MBE/WBE			
		Subcontractor/Sub-consul-	tant
City of Austin Certified	☐ MBE ☐ WBE	Ethnic/Gender Code:	☐ NON-CERTIFIED
Vendor ID Code			
Contact Person		Pho	ne Number:
Additional Contact Info	Fax Number:	E-mail:	
Amount of Subcontract	\$		
List commodity codes & description of services	1 F		
Justification for not utilizing a	g 4		16
certified MBE/WBE			
		1	
	t Muletin II	SMBR Contact Information	
MBR Contact Name	Contact Date	Means of Contact	Reason for Contact
à		☐ Phone OR ☐ Email	
	I acknowledge that	the Offeror HAS	or HAS NOT complied with these
lewing Counselor		Date	
	no the Subcontracti	ng/Sub-Consultant Utilia	eation Plan and Concur Do Not

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

Solicitation No. RFQS XXX????

IN THE MATTER OF THE ARBITRATION

* WORK SCHEDULES

* BETWEEN

* FEDERAL MEDIATION AND CONCILIATION SERVICE Case # 15
and

* Before

AWARD

SHERRY R. WETSCH

On September 3, 2015, a hearing was held in this matter in 3. Appearing on behalf of the Union was attorney 3. Appearing on behalf of the Respondent was attorney 3. Sworn testimony was taken from Grievant

By agreement of the parties, the deadline for submission of post hearing briefs was set for November , 2015. On November , 2015 counsel notified this arbitrator that the parties had agreed to move the deadline for post hearing briefs to December , 2015. On December to counsel notified this hearing officer that the parties had agreed to extend the deadline for post hearing briefs to January , 2016. On January 7th counsel informed the undersigned that the parties had further agreed to extend the deadline for filing post hearing briefs to January , 2016. The parties filed post hearing briefs on January 19, 2016.

ISSUE

The agreed upon issue in this case is whether the Company had just cause to terminate the company had just cause to the company had just cause to the company had just cause the company had just

EXHIBITS

JOINT 1	Collective Bargaining Agreement 2013 to 2013 to 2016
JOINT 2	, 2013 Grievance Form
JOINT 3	, 2013 Answer to Written Grievance
JOINT 4	, 2013 Termination Letter
EMPLOYER 1	October 2013 Statement of
EMPLOYER 2	Screenshot of Blend Tanks
EMPLOYER 3	October , 2013 E-Mail String
EMPLOYER 4	September , 2013 Reprimand Report Form
EMPLOYER 5	October 6, & 7, 2013 Area Area Data
EMPLOYER 6	October & & 2013 Report
EMPLOYER 7	October 2, 2013 Reprimand Report Form
EMPLOYER 8	October 2, 2013 Data
EMPLOYER 9	October & 29, Report
EMPLOYER 10	October 2, 2013 Handwritten Statements of
EMPLOYER 11	November 2013 Statement of
1	

RELEVANT PROVISIONS OF COLLECTIVE BARGAINING AGREEMENT (Joint 1)

ARTICLE 2: Company Rights

Except as provided by the specific provisions and terms of this Agreement, the Company reserves and retains, sole and exclusively, all its inherent rights to manage the plant, as such rights existed prior to the execution of this Agreement with the Union. It is recognized, therefore, that the management of the plant, including the direction of the working forces and all other functions normally incident to such responsibility, is vested in the Company and will be exercised in a manner consistent with the terms of this Agreement. Nothing in this Article shall interfere or prevent the Union from exercising any of its statutory rights.

ARTICLE 9- Section 4: Adjustment of Grievances

- A. Arbitration is the final step in the Grievance Procedure. The decision of the Arbitrator shall be final and binding on both parties.
- D. The arbitrator's jurisdiction to make an award shall be limited by the submission and confined to the interpretation or application of the provisions of this Agreement, letters of understanding, or Memoranda of Agreement.

ARTICLE 12- Section 4: Management Rights

The Company reserves the rights to suspend, discharge, or otherwise discipline an employee for just cause.

DISCUSSION

Respondent's was employed by the Company from 1998 until his termination on 3, 2013. (Tr. 327; Joint 4) During his last six or seven years with the Company, Mr. held the position of 1998. (Tr. 327-328) A primary responsibility of the ris to carry out transfers of material from one 1998 tank to another. (Tr. 34-35) The transfer from one 1998 tank to another is the responsibility of the 1998 tank to another. (Tr. 34-35) The transfer from one 1998 tank to another is the responsibility of the 1999 transfers takes priority over making 1999. (Tr. 76) Making 1999 takes about 30 minutes to complete and can be done between transfers and 1999 work. (Tr. 162) operators are to make rounds every two hours to check the 1999 levels and ensure that all the pumps and tanks are functioning properly. (Tr. 70-71) The observations made on those rounds are recorded by the 1999 operators on log sheets. (Employer 5 & 8) The Grievant had the skills for the 1999 operator position. (Tr. 321)

operators receive instructions from Foremen (Tr. 35-37) have a broader range of responsibilities than ators and are responsible for all stages of production. (Tr. 33 & 325)

On September, 2013 Mr. received a reprimand for failing to show up for work on his scheduled overtime day. (Employer 4)

Mr. worked the night shift on the evening of October 2013 which began at 5:30 p.m. and ended at 5:30 a.m. (Tr. 39) The Company asserts that during that shift Mr. failed to carry out a transfer instruction correctly, resulting in a loss of production. (Tr. 40 & 89) On October 2013 Mr. received a two day suspension for this incident. (Employer 7) This written reprimand stated that future incidents will be subject to additional discipline up to and including termination. The Grievant provided no explanation for the error. (Tr. 40)

Mr. Carbon Preturned to work from his two day suspension on October 2013.

(Employer 7) On October 2, 2013 Mr. arrived for the evening shift around 6:00 p.m. (He worked the 6 p.m. to 6:00 a.m. shift that date.) At that time there was an "as needed" transfer occurring from tank 2 to tank 3 (Tr. 53) The transfer from tank 3 to tank 3 was facilitated by a pump between the two tanks, which Mr. controlled. (Tr. 54-55) The pump was designed to shut off if the level from the first tank ran below 10%. (Tr. 56) At around 8:30 p.m. the level in tank 2 ran below 10% and the pump between tanks 3 and 3 shut off. (Tr. 56-57) When the pump shut off, Mr. would/could have observed a visual alarm on the computer screen he is assigned to in the recovery area control room, an audible alarm in the recovery area, and a visual indicator on the control panel in the recovery area. (Tr. 123) Despite these indicators, the pump remained off for close to three hours. (Employer 11)

Evidence was presented that the internal and external alarms were not working that night. (Employer 10) However, Mr. Should have noticed the pump was shut off had he completed his regular rounds at 9:00 p.m. and 11:00 p.m., when he would have observed the levels of the tanks and recorded that information on the Coperators' log. (Tr. 125-126) The alarms are meant to function as a secondary way for Coperators to be alerted to problems. (Tr. 170) Because of Mr. Coperators in attention to his job duties, the pump shut off and tank. If filled up with material from earlier stages of production while tank drained as it fed later stages of production. (Tr. 116-117; Employer 11) Ultimately tank approximately 11:15 p.m. (Employer 11) An unexpected shutdown can create a safety issue which can result in fire. (Tr. 42) Production did not return to normal until 1:15 a.m. (Employer 11)

The Grievant testified that he was having problems with the situation that night. (Tr. 343-346) Making a batch of situation is secondary to running the plant, which is monitoring the tank levels. (Tr. 76) A batch of situation and be made at any time during the shift. Additionally, making situation takes about 30 minutes, and the pump was down over two and a half hours. (Tr. 131) The Company considered the fact that Mr. was making and investigated his claim that both the internal and external alarms were not working. (Tr. 121-124; 162-163; 171; 192-193) Management concluded that, neither claim even if true, justified or excused Mr. stacks a lack of attention towards the stanks, the pump and the transfer. (Tr. 121-124; 162-163; 171)

In an October the statement, the Grievant noted that during the October shift, manual transfers from to required him to be in the field on two separate occasions. (Employer 10) However there was insufficient evidence to explain why this would have prevented him from monitoring tanks and .

Evidence was presented that Employer's Exhibit 8 is an incomplete copy of the "Area Tank Lever Data" log that was prepared by the Grievant for the 13 (6 p.m.) to 13 (6 a.m.) shift. (Tr. 338 & 339: Employers 8) This arbitrator took that into consideration.

The Union has argued that there has been disparate treatment in this matter. Evidence was presented regarding the performance of employees and and These employees also had problems at work and were not terminated. However, in examining the evidence, there are differences between the circumstances surrounding the work performance of these employees versus the Grievant.

The Union also asserts that there was managerial fault/unclean hands in this matter.

Shift. (Tr. 63) However, the undersigned arbitrator does not believe any concerns raised regarding the job performance of Mr. Shift. (Tr. 63) relieved the Grievant of his work responsibilities during the January night shift. It was the Grievant's responsibility to monitor and execute the lank transfers consistent with the instructions of the shift.

After a review of the evidence, the undersigned has determined that during his October shift, the Grievant failed to make routine operator checks in the Area during the 9:00 p.m. to 11:00 p.m. time frame, and that the Grievant did not properly check and record levels for the transfer of the transfer o

The failure of the Grievant to check levels during his routine operator checks resulted in a shutdown of pump, resulting in the running out of feed to the Unit. This resulted in the Unit shutdown further resulting in lost production, additional unnecessary off test product, and the additional off specification product during the restart of the Unit. The Company conducted a fair investigation following the October plant shutdown. The Company thereafter terminated the Grievant on November 2013. (Joint 4) A grievance was timely filed on November 2013. (Joint 2)

The parties entered into a collective bargaining agreement (CBA) effective March 3013. (Joint 1) The parties CBA does not require progressive discipline for non-attendance issues. (J-1 - Article 12)

The Company has the right to suspend or terminate an employee for "just cause". (Joint 1- Article 12) The burden of demonstrating cause falls on the employer. To meet this burden, the

15:

employer needs to show by a preponderance of the evidence that it had cause to discharge Mr.

CONCLUSION

The Company has the burden of proof. Based upon a review of all of the evidence submitted, the undersigned has determined that the Company has met its burden. The Company had just cause to terminate the employment of the company. The grievance is denied.

Pursuant to Article of the CBA, the parties are to equally share the salary and expenses incurred by the Arbitrator in this matter.

Signed this this 31st day of January, 2016.

Sherry R. Wetsch, Arbitrator

ATTACHMENT A



CITY OF AUSTIN PURCHASING OFFICE EXCEPTIONS

Solicitation Number: RFQS 7400-CRR0305

The City will presume that the Respondent is in agreement with all sections of the solicitation unless the Respondent takes specific exception as indicated below. The City, at its sole discretion, may negotiate exceptions to the sections contained in the solicitation documents or the City may deem the Respondent non-responsive. The Respondent that is awarded the contract shall sign the contract with the accepted or negotiated sections.

Place this attachment in Tab 7 - Exceptions. Copies of this form may be utilized if additional pages are needed.

Accepted as writt	en.	☐ Not accepted as written. See below:
	Purchase Terms & Condi ental Purchase Provisions Work	
Page Number	Section Number	Section Description
Alternative Langua	ge:	
Justification:		

3-6-18

Attorney, Arbitrator, Mediator, Hearing Officer 14103 Manderly Drive, Houston, Texas 77077

TEL: 281-558-3503 E-MAIL: swetsch@flash.net Fax: 281-558-3489
WETSCHLAW.COM
Licensed to Practice Law in Texas, North Dakota and Missouri

February 6, 2018

RE: Solicitation NO: RFQS7400 CRR0305 Open Date/Time: February 13 @ 2:00 p.m.

Business Organization

The name of my company is Sherry R. Wetsch. I am a HUB and intend to perform the Hearing Officer services myself. I do not intend to subcontract any of the services. I am a sole proprietor. I am the person authorized to negotiate Contract terms and render binding decisions on Contract matters. My address is: 14103 Manderly Drive, Houston, Texas 77077. My telephone number is 281-558-3503.

ATTORNEY, ARBITRATOR, HEARING OFFICER, MEDIATOR
14103 MANDERLY DRIVE
HOUSTON, TEXAS 77077
TEL: 281-558-3503 E-MAIL: SWETSCH@FLASH.NET FAX 281-558-3489

ORIGINAL RESPONSE OF SHERRY WETSCH TO RFQS 7400 CRR0305 (CITY WIDE HEARING OFFICER)

TO: City of Austin, Central Purchasing 124 West 8th Street, Room 308 Austin, Texas 78701

Opening date: February 13, 2018 @ 2:00 p.m.

Attorney, Arbitrator, Mediator, Referee
14103 Manderly Drive, Houston, Texas 77077
TEL: 281-558-3503 E-MAIL: swetsch@flash.net Fax: 281-558-3489
Licensed to Practice Law in Texas, North Dakota and Missouri

February 6, 2018

Cover Page for Writing Sample

RE: Request for Qualification Statement (RFQS) 7400 CRR0305 Open Date/Time: February 14, 2018 @ 2:00 p.m.

I have included two writing samples as part of my response. It was intentional that both writing samples are short and diverse. The first sample is at Tab 1 (2) and is a Final Decision I wrote for DARS in June of 2014. The second sample is at Tab 4 and is a public-sector Award issued in January of 2016. The DARS Decision required the application of statutory authority as well as policies. The second Order required contract interpretation.

Attorney, Arbitrator, Mediator, Referee 14103 Manderly Drive, Houston, Texas 77077

TEL: 281-558-3503 E-MAIL: swetsch@flash.net Fax: 281-558-3489 WETSCHLAW.COM

Licensed to Practice Law in Texas, North Dakota and Missouri

February 6, 2018

RE: Solicitation NO: RFQS 7400 CRR0305 Open Date/Time: February 13, 2018 @ 2:00 p.m.

Project Approach

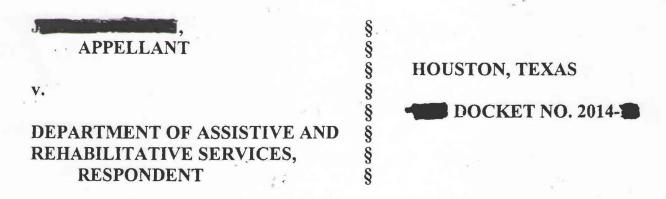
As a contractor for neutral services with numerous government agencies, I have experience complying with the terms of each contract, including submissions of work product, compliance with deadlines, and submissions of invoices. I hereby certify that I will comply with the terms and obligations as outlined in the above identified RFQS. I also certify that I will comply with all applicable rules and regulations of Federal, State and Local governing entities. I also believe that I meet the qualifications and can provide the services as outlined in the RFQS. My work schedule is flexible to accommodate requests for services as the need arises. I am accustomed to traveling to perform professional services as a neutral.

I have reviewed the *Scope of Services* section of this RFQS. I have the qualifications and experience discussed in the RFQS. I have experience making independent recommendations to governing authorities. As a sole practitioner, I am accustomed to working with minimal supervision, and using initiative and independent judgment. I am also experienced in writing final written orders and recommendations which identify pertinent issues of related law, findings of fact and proposals for consideration.

I have extensive experience scheduling and presiding over hearings; conducting hearings involving legal, procedural, and technical issues; examining witnesses and ruling on evidence; analyzing testimony and evidence; ruling on discovery disputes, scheduling requests and motions; compiling and maintaining records of evidence and ensuring proper handling for confidentiality; preparing opinions, proposals for decision, or orders; preparing reports, and performing related work as assigned.

The administrative deadlines identified in the *Scope of Services*, as well the other administrative requirements such a producing a written report in the most current version of Microsoft Word are agreeable to me.

BEFORE A DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES, IMPARTIAL HEARING OFFICER



FINAL DECISION

I. PURPOSE OF THE HEARING:

The purpose of this proceeding was to provide the Appellant an Impartial Due Process Hearing that he requested and is entitled to under the Rehabilitation Act of 1973, as amended, and to review determinations by the Respondent that affect the provision of rehabilitation services.

II. OFFICIAL NOTICE

The Impartial Hearing Officer (IHO) takes official notice of the following:

- A. The Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 et seq.
- B. U.S. Department of Education Regulations, State Vocational Rehabilitation Services Program, 34 C.F.R. §§ 361.1 et seq.
- C. Texas Human Resources Code, §§ 111.001 et seq.
- D. Department of Assistive and Rehabilitative Services (DARS), Division for Rehabilitation Services (DRS), Regulations, Vocational Rehabilitation Services Program, 40 Tex. Admin. Code §§ 107.101 et seq.
- E. DARS State Plan for Vocational Rehabilitation Services.

Final Decision
DRS CRS Docket No. 2

- F. DARS Rehabilitation Policy Manual (RPM).
- G. Department of Assistive and Rehabilitative Services (DARS), Division for Rehabilitation Services (DRS), Regulations, Comprehensive Rehabilitation Services, 40 Tex. Admin. Code §§107.701 et seq.
- H. DARS docket file in this action that is maintained by the DARS Hearing Coordinator.

III. SUMMARY OF APPLICABLE LAW

The Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 701 et seq) authorizes the provision of vocational rehabilitation services to eligible individuals with disabilities. Federal regulations implementing the Act are codified at Title 34 C.F.R. §§361.1 et seq. DARS DRS vocational rehabilitation program regulations are codified at Title 40 Tex. Admin. Code §§107.101 et seq. DARS DRS comprehensive rehabilitation services program regulations are codified at Title 40 Tex. Admin. Code §§ 107.701 et seq. The DARS RPM provides detailed agency policies on the provision of vocational rehabilitation services, and comprehensive rehabilitation services, to eligible persons with disabilities.

IV. PROCEDURAL HISTORY

- A. DARS Office for Administrative Hearings received the Appellant's Request for Due Process Hearing on April 21, 2014.
- B. On April 29th, the IHO scheduled a pre-hearing teleconference for the parties.
- C. The IHO conducted a prehearing telephone conference with the parties on May 14, 2014. Those participating were Appellant, and Operations Director for Programs, on behalf of Respondent. This IHO and Hearings Coordinator Metallands were also present during the pre-hearing teleconference. During the course of the pre-hearing teleconference, the procedures for the impartial hearing process were reviewed, the contested issues for the hearing were discussed, and a hearing date, time and location were selected by mutual consent.
- D. The IHO issued a Pre-hearing Order on May 14, 2014. The Order set out pre-hearing deadlines and set the date, time and location for the Impartial Due Process

Final Decision
DRS-CRS Docket No. 1888

Hearing as agreed by the parties, and established the contested issue(s) for the hearing.

E. The IHO conducted an Impartial Due Process Hearing on May 27, 2014, at the DARS Austin Regional Field Office located at 6400 Highway 290 East, Suite 201, Austin, Texas 78723, as agreed to by the parties during the May 14th pre-hearing teleconference, and as outlined in the May 14th Pre-hearing Order. Those participating in the May 27th hearing were the location on behalf of the Respondent, and hearing were the location began at 9:13 a.m., and adjourned at 11:02 a.m. An audio recording was made by the IHO. Appearing as witnesses at the hearing were Mr.

F. At the conclusion of the May 27th hearing, the parties were given a deadline of May 30th for post hearing submissions. A post hearing submission from DARS was received on May 27th. A post hearing submission was received from the Appellant on May 30th.

V. ISSUES

During the May 27th hearing, the parties stipulated to the following contested issue in this matter:

1. Should DARS pay for rehabilitation expenses in the amount of \$47,989.00 incurred by the Appellant on behalf of his son from July 15, 2013 through September 17, 2013, at the Central Texas Rehabilitation Hospital?

VI. SUMMARY OF TESTIMONY OF WITNESSES

These witnesses testified and were examined under oath:

Appellant, testified that his teenage son () was injured on July 3, 2013. His son was hospitalized at Brackenridge Hospital from July 3rd to July 15th, and was transferred from Brackenridge Hospital on July 15th to Central Texas Rehabilitation Hospital (CTRH) ... was discharged from CTRH on August 17, 2013. His son returned to classes at the start of the Fall semester and did not miss school. ... attended school in a wheelchair, progressed to a walker, and is

now walking regularly. After discharge from CTRH, his son went to CTRH as an outpatient, with visits becoming less frequent. The Appellant is asking DARS to pay outstanding medical bills from CTRH, in the amount of \$47,989.00, which were incurred while his son was hospitalized at CTRH from July 15 through August 17, 2013. He did not have medical insurance. The appellant did not wait for a DARS purchase order because his son needed immediate assistance and time was of the essence for his son. His son's recovery was miraculous.

The Appellant initially contacted DARS for assistance with his son's rehabilitation on July 23, 2013. An Individualized Written Rehabilitation Plan (IWRP), was executed in October of 2013. The appellant did not know that he needed to sign an IWRP in order for the process to start to get on the waiting list. The Appellant would like money allocated by DARS after his son was removed from the waiting list in February of 2014, to be used to retroactively pay the inpatient rehabilitation bills from CTRH which were incurred in July and August of 2013. The appellant knew from the beginning that there was a waiting list. However, he thought the allocation of funds could be applied retroactively.

first approached DARS for assistance on July 23, 2013. Inpatient Comprehensive Medical Rehabilitation Services is considered a Core Service under RPM 9.7. Core services are provided once the IWRP is signed and the consumer comes off the waiting list. The CRS program has an interest and waiting list. On July 23rd there was an extensive waiting list for services. DARS follows a stringent order so that people are not bumped up on the list. Everyone on the list is considered interested in services until the IWRP is finalized. An IWRP was signed on October 23, 2013, at which time the consumer was placed on a waiting list for allocation of

Final Decision
DRS-CRS Docket No

funds for services. The consumer was removed from the waiting list on February 3, 2014. When the Consumer is taken off of the waiting list, an allocation of funds for services is made. When ... came off the waiting list he no longer required inpatient rehabilitation services. The consumer had returned to school and playing tennis. DARS policy does not allow the allocating of funds for a consumer while he is on the interest or waiting list. DARS cannot use money allocated after the consumer was removed from the waiting list to retroactively pay the inpatient rehabilitation bills incurred at CTRH in July and August of 2013. Denial of the payment for the inpatient rehabilitation services at CTRH is supported by DARS policy. There were no significant delays in this matter by DARS.

VII. SUMMARY AND ADMISSION OF DOCUMENTARY EXHIBITS Respondent's Exhibits:

- 1. Consumer information from automated case management system related to the Consumer in Rehab Works -Consumer DRS Case
- 2. Consumer Case Note List and Case Notes from automated case management system in Rehab Works Consumer DRS Case
- 3. Individualized Written Rehabilitation Plan (IWRP) in Rehab Works-Consumer DRS Case
- Consumer Purchase Order List and Consumer Purchase Orders in Rehab Works- Consumer DRS Case
- 5. Copy of Consumer Paper Case File
- 6. Emails pertaining to Consumer
- 7. Letter from dated March 27, 2014

IHO Exhibits:

A. DARS Affidavit from (DARS submitted a two page May 21st affidavit from Claudia Peden in lieu of her in person testimony. There were no objections from the Appellant regarding the affidavit.)

Appellant Exhibits: none offered

VIII. FINDINGS OF FACT

Based upon the witness testimony and exhibits provided by the parties, the IHO finds by a preponderance of the evidence the following:

- 1. The Appellant filed a Request for Due Process Hearing on April 21, 2014, requesting that DARS pay the rehabilitation expenses at Central Texas Rehabilitation Hospital (CTRH).
- 2. The Appellant's son, ..., was injured in a diving accident on July 3, 2013. (testimony of Appellant, and exhibit 1.7)
- 3. . was born in 1997 and is a minor. (exhibit 1.2, testimony of Appellant)
- 4. The Appellant's son was at the Brackenridge Hospital from July 3rd to July 15, 2013. (testimony of Appellant)
- 5. L. was transferred to CTRH on July 15, 2013, and discharged on August 17, 2013. (testimony of Appellant, exhibit 5.76)
- 6. **C.** was in CTRH for 33 days. It is the outstanding bills from this hospitalization that the Appellant seeks payment of by DARS. (testimony of Appellant)
- 7. The Appellant initially contacted DARS for assistance on July 23, 2013. (exhibits 1.2 & 2.6, testimony of Appellant)
- 8. The application for the CRS program was taken on August 13, 2013. (exhibits 2.4 & 7, testimony of (**)

Final Decision
DRS/CRS Docket No. 2

- 9. was certified eligible for CRS services on September 17, 2013. (exhibits 2.3, 2.15 & 7, testimony of (exhibits)
- 10. An Individualized Written Rehabilitation Plan (IWRP) was executed on October 23, 2013. (exhibit 3, testimony of & Appellant) The plan was for Comprehensive Rehabilitation Services (CRS). (exhibit 3)
- 11. A consumer is considered to be on the "waiting" list for CRS funds when the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system. (Affidavit of Charles are considered to the IWRP is signed in the consumer case management system.)
- 12. The Appellant was removed from the waiting list on February 3, 2014.

 Funds were allocated on this date for the consumer to begin services.

 (Affidavit of problem, exhibit 2.48, testimony of problem)
- 13. The Appellant is requesting DARS to pay for services that were provided prior to February 3, 2014, while the consumer was hospitalized at CTRH from July 15 through August 17, 2013. (exhibit 7, testimony of Appellant)
- 14. DARS RPM 9.3 CRS Interest and Waiting List, states as follows: Because the need for services is usually greater than the available funds can support, CRS has an Interest and Waiting List for Consumers. Consumers are served in the order in which their original CRS IWRP is written and signed. A consumer is considered to be "waiting" for CRS funds when the IWRP is signed in the consumer case management system. All other consumers are considered "interested". The Interest and Waiting List consists of CRS consumers in ReHab Works, along with their initial contact date; and is managed by the Central Office program specialist and the CRS administrative assistant.

Final Decision
DRS-CRS Docket No. 2014-22

IX. APPLICABLE LAW

The applicable and governing regulations regarding the Appellant's claim are: 40 Texas Administrative Code § 101.1007, which states, "Any applicant or eligible individual who is dissatisfied with a determination, as described in §101.1003 of this subchapter (relating to Legal Authority) made either by the Division for Blind Services or the Division for Rehabilitation Services may request a review of the determination.

Also applicable is DARS RPM Chapter 9 as follows:

DARS RPM 9.3 CRS Interest and Waiting List, states as follows: Because the need-for services is usually greater than the available funds can support, CRS has an Interest and Waiting List for Consumers. Consumers are served in the order in which their original CRS IWRP is written and signed. A consumer is considered to be "waiting" for CRS funds when the IWRP is signed in the consumer case management system. All other consumers are considered "interested". The Interest and Waiting List consists of CRS consumers in ReHab Works, along with their initial contact date; and is managed by the Central Office program specialist and the CRS administrative assistant.

DARS RPM 9.7 IWRP Services, states the following: Core services are provided to CRS consumers once the IWRP has been signed and the consumer is removed from the waiting or interest list.

DARS RPM 9.7.1 Inpatient Comprehensive Medical Rehabilitation Services, states: Inpatient comprehensive medical rehabilitation services may be sponsored only when there is no more than one year between the date of injury

Final Decision
DRS/CRS Docket No. 2000

and the date of initial contact, are indicated on the IWRP as "up to 30 days of services," and may be extended to a maximum of 90 days without an IWRP amendment when recommended by the inpatient interdisciplinary team.

X. DISCUSSION

In review of the testimony and evidence, the Appellant's pursuit of assistance for payment of the inpatient medical rehabilitation services incurred at CTRH in July and August of 2013, is well documented. He initially contacted DARS on July 23, 2013. An application was taken on August 13, 2013. The consumer was certified as eligible on September 17, 2013, and an IWRP was executed on October 23, 2013. He was removed from the waiting list on February 3, 2014, at which time funds were allocated for services. By the time the IWRP was signed, the consumer was back at high school. When the consumer was taken off of the waiting list, he no longer needed inpatient comprehensive rehabilitation services.

The Rehabilitation Policy Manual (RPM), Chapter 9.3 and 9.7 address the Comprehensive Rehabilitation Services (CRS) Program. Because the need for services is usually greater than the available funds can support, CRS has an interest and waiting list for consumers. RPM 9.3 states that consumers are served in the order in which their original CRS IWRP is written and signed. A consumer is considered to be "waiting" for CRS funds when the IWRP is signed in the consumer case management system. At the time the Appellant completed the application for services, DARS had a waiting list. RPM 9.7 states that core services are provided to CRS consumers once the IWRP has been signed and the consumer is removed from the waiting or interest list.

Final Decision
DRS CRS Docker No.

In this case, by the time the Consumer's IWRP was signed, he had already been discharged from the CTRH and was back in high school. DARS did not issue a purchase order to CTRH for inpatient comprehensive services because at the time the consumer was receiving the service, his IWRP had not yet been developed and he was still on the CRS interest/waiting list. The purchase order is DARS authorization to purchase a service. Although the agency does not find fault with the Appellant taking actions he deemed necessary for his son's recovery, DARS must comply with CRS policy. DARS is unable to retroactively pay for inpatient services that were incurred prior to when the IWRP was written, and prior to when J.L. was removed from the CRS waiting list. DARS did not violate policy in this matter.

XI. CONCLUSIONS OF LAW

After due consideration of the foregoing findings of fact, the IHO makes the following conclusions of law with respect to the issue in this proceeding.

- A. Appellant properly petitioned for an Administrative Hearing on April 21, 2014, under 40 Texas Administrative Code § 101.1007.
- B. With respect to the issue, "Should DARS pay for rehabilitation expenses in the amount of \$47,989.00 incurred by Appellant for his son from July 15, 2013 through September 17, 2013, at the Central Texas Rehabilitation Hospital", the Agency did not inappropriately deny the Appellant's request that DARS pay for these hospital expenses.
- C. DARS did not violate any policies in this matter.

19-17

XII. DECISION AND ORDER

Based upon the foregoing findings of fact and conclusions of law, the IHO hereby finds for the Respondent on the issue. The Agency did not inappropriately deny

Final Decision
DRS/CRS Docket No 29

the Appellant's request to pay for the rehabilitation expenses incurred by the Appellant for his son from July 15 through September 17, 2013 at the Central Texas Rehabilitation Hospital.

SIGNED this 4th day of June, 2014.

Sherry Wetsch

Impartial Hearing Officer

NOTICE: The parties have the right to file a Motion for Reconsideration within 20 days of this Decision in accordance with 40 Tex. Admin. Code §§ 101.1021, 101.943. If no Motion for Reconsideration is filed, this Decision is final and effective on this date, except that a party who disagrees may bring a civil action under 40 Tex. Admin. Code §§ 101.1023, 101.945.

Attorney, Arbitrator, Mediator, Hearing Officer 14103 Manderly Drive, Houston, Texas 77077

TEL: 281-558-3503 E-MAIL: swetsch@flash.net Fax: 281-558-3489 WETSCHLAW.COM
Licensed to Practice Law in Texas, North Dakota and Missouri

February 6, 2018

RE: Solicitation NO: RFQS7400 CRR0305 Open Date/Time: February 13 @ 2:00 p.m.

Project Management Structure & Personnel

The name of my company is Sherry R. Wetsch. I am a HUB and intend to perform the Hearing Officer services myself. I am a sole proprietor. I am the person authorized to negotiate Contract terms and render binding decisions on Contract matters. My address is: 14103 Manderly Drive, Houston, Texas 77077. My telephone number is 281-558-3503. I do not intend to subcontract any of the services.

I currently do not have any employees and personally perform all services rendered. I will be the person interfacing with the City project manager and team personnel.

Attorney, Arbitrator, Mediator, Referee
14103 Manderly Drive, Houston, Texas 77077
TEL: 281-558-3503 E-MAIL: swetsch@flash.net Fax: 281-558-3489

WETSCHLAW.COM
Licensed to Practice Law in Texas, North Dakota and Missouri

February 6, 2018

RE: Request for Qualification Statement (RFQS) 7400 CRR0305

Open Date/Time: February 14, 2018 @ 2:00 p.m.

EXPERIENCE

I have a satisfactory record providing neutral services for numerous governmental entities. I have been arbitrating and mediating cases since 1996, and have served as a neutral on in excess of 2000 cases, in both the public and private sectors. Parties have included numerous governmental and regulatory entities on federal, state and local levels. These files have included employment and labor disputes, property appraisal issues, contract disputes, consumer complaints, and securities disputes.

I started my legal career in 1984 as an attorney for the U.S. Department of the Army. From 1988 to 1991, I worked as an Assistant Prosecuting Attorney. I thereafter went into private practice. Since 1996 my practice has centered on serving as a third- party neutral for and through governmental and regulatory entities.

I currently serve as a hearing officer and mediator for TWC. From 1999-2002 I served as a temporary ALJ for SOAH. I have performed arbitration services through numerous organizations including the following: AAA, FINRA, FMCS, and the TX State Comptroller's Office. I have conducted in excess of 25 hearings each year during the last five years.

As an ALJ, arbitrator and hearing officer, I have demonstrated my ability to provide the services outlined in the RFQS. I have presided over hundreds of cases in person, over the telephone and through written submissions. I have experience dealing with both pro se parties as well as parties who are represented by counsel. I have explained hearing procedures, administered oaths and listened to testimony, ruled on the admissibility of evidence and permitted parties to present evidence. I have experience overseeing discovery matters, and all aspects of an evidentiary hearing such as presentation of evidence and examination of witnesses. I have also prepared determinations containing findings. I have experience working with individuals from all economic brackets and cultures.

As an arbitrator through the Texas State Comptroller's Office, I hear disputes involving commercial and residential property tax appraisal appeals. As a hearing officer and mediator through TWC, regulatory and policy issues have been raised. As a labor arbitrator I have heard disputes involving police and fire departments. Budgets, emergency response time, EMS, staffing, adequacy of investigations, and tax issues have been addressed. I have twice served as independent fact finder for TDHCA. In 2016 I served as a Hearing Officer for the City of Austin. My contact person for that file was Carol Shelton.

I have mediated EEO related employment disputes for the United States Postal Service since 1999. I also serve as a mediator through SOAH. I served as a neutral for TXDMV/TXDOT for over ten years on hundreds of cases conducting telephone mediations for them on an as needed basis. Copies of the certificates of various mediation training courses are enclosed. I completed the 40- hour basic mediation training course in 1996.

My contact person for these contracts were/are as follows:

Melissa Collins Hearings Coordinator Texas Workforce Commission 101 E. 15th Street Austin, Texas 78778 Telephone 512-936-3653

Jeffrey Pender
Deputy General Counsel
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701
Telephone 512-475-4752

Henry Moore EEO ADR Specialist United States Postal Service Houston, Texas Telephone 713-226-3525

The Honorable Howard Seitzman State Office of Administrative Hearings 300 West 15th Street, Suite 504 Austin, Texas 78701 Telephone 512-475-4993

Tiffiny Roybal
Case Administrator
Texas Department of Motor Vehicles
Enforcement Division
125 East 11th Street
Austin, Texas 78701
Telephone 512-465-3664



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

The Texas Comptroller of Public Accounts (CPA) administers the Statewide Historically Underutilized Business (HUB) Program for the State of Texas, which includes certifying minority, woman, and service disabled veteran-owned businesses as HUBs and facilitates the use of HUBs in state procurement and provides them with information on the state's procurement process.

We are pleased to inform you that your application for certification/re-certification as a HUB has been approved. Your company's profile is listed in the State of Texas HUB Directory and may be viewed online at https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. Provided that your company continues to meet HUB eligibility requirements, the attached HUB certificate is valid for the time period specified.

You must notify the HUB Program in writing of any changes affecting your company's compliance with the HUB eligibility requirements, including changes in ownership, day-to-day management, control and/or principal place of business. *Note: Any changes made to your company's information may require the HUB Program to re-evaluate your company's eligibility.*

Please visit our website at http://comptroller.texas.gov/procurement/prog/hub/ and reference our publications (i.e. Grow Your Business pamphlet, HUB Brochure and Vendor Guide) providing addition information on state procurement resources that can increase your company's chances of doing business with the state.

Thank you for your participation in the HUB Program! If you have any questions, you may contact a HUB Program representative at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

Texas Historically Underutilized Business (HUB) Certificate



Certificate/VID Number: 1141933545700
File/Vendor Number: 023199
Approval Date: 16-OCT-2018
Scheduled Expiration Date: 16-OCT-2022

The Texas Comptroller of Public Accounts (CPA), hereby certifies that

LAW OFFICE OF SHERRY WETSCH

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate printed 19-OCT-2018, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, business location) provided in the submission of the business' application for registration/certification as a HUB, you must immediately (within 30 days of such changes) notify the HUB Program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility.

Laura Cagle-Hinojosa, Statewide HUB Program Manager Statewide Support Services Division

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies, universities and prime contractors are encouraged to verify the company's HUB certification prior to issuing a notice of award by accessing the Internet (https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp) or by contacting the HUB Program at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

1141933545700 023199 LAW OFFICE OF SHERRY WETSCH 14103 MANDERLY DR HOUSTON, TX 77077-1817



Attorney-Mediators Institute®

For Attorneys Only

This is to Certify That on November 16, 1996

Sherry Wetsch

Completed All Requirements of.

ADVANCED MEDIATOR TRAINING

Comprising in Excess of
6 Classroom Hours of Training
in the Art, Skill and
Service of Mediating Disputes

President

millettell



Attorney-Mediators Institute®
For Attorneys Only

This is to Certify That

Sherry Wetsch

Has Completed All Requirements of Family Law Mediator Training

Comprising 24 Classroom

Hours of Training in the Art, Skill
and Service of Mediating Disputes in
Matters Involving Family Law,
Family Dynamics and Child Development

Vand F Hank

President



Attorney-Mediators Institute® For Attorneys Only

This is to Certify That

Sherry R. Wetsch

Has Completed All Requirements of Basic Mediator Training

Comprising in Excess of
40 Classroom Hours of Training
in the Art, Skill and
Service of Mediating Disputes

/mid F Ham

President

Texas Historically Underutilized Business (HUB) Certificate



Certificate/VID Number: File/Vendor Number: Approval Date: Scheduled Expiration Date: 1141933545700 023199 21-JAN-2015 21-JAN-2019

The Texas Comptroller of Public Accounts (CPA), hereby certifies that

LAW OFFICE OF SHERRY WETSCH

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate printed 23-JAN-2015, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, business location) provided in the submission of the business' application for registration/certification as a HUB, you must immediately (within 30 days of such changes) notify the HUB Program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked-upon findings of ineligibility.

Paul A. Cibon

Paul Gibson, Statewide HUB Program Manager Texas Procurement and Support Services

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies and universities are encouraged to validate HUB certification prior to issuing a notice of award by accessing the internet (http://www.window.state.tx.us/procurement/cmbl/cmblhub.html) or by contacting the HUB Program at 1-888-863-5881 or 512-463-5872.



ADDENDUM PURCHASING OFFICE CITY OF AUSTIN, TEXAS

Solicitation: 7400-CRR0305 Addendum No: 1 Date of Addendum: 02/01/2018

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Clarifications:

- 1.1 Replace Supplemental Purchase Provisions, Section 0400, with the attached.
- I.2 Replace Qualification Statement Preparation Response Instructions, Section 0600, with the attached.

II. Questions:

II.1 If we are awarded a contract do we obtain the required insurance at that point?

Answer: Yes, that is correct. You are not required to submit insurance with the response.

II.2 Why are there now requirements for the MBE/WBE program in this solicitation?

Answer: This solicitation is under the City Manager's signature authority, so per the City Ordinance the MBE/WBE program is not applicable. All respondents should complete the Section 0900, but if you do plan to sub-contract out any portion of the contract please complete the Section 0900 and contact SMBR for guidance on the process to complete the Section 0905.

II.3 As a City Certified Minority or Woman Owned Business how can we ensure that our contact information is available to Prime vendors that plan to sub-contract out any of the scope of work?

Answer: You can email your information to the authorized point of contact, Claudia Rodriquez. If a Prime vendor requests contact information for subcontractors available for this project we will provide your contact information to those vendors. We will also check to ensure your company is listed under the correct commodity codes.

II.4 In a previous solicitation we were not required to provide a project management structure as requested in Section 0600. As a sole-proprietor how should we respond to this section?

Answer: As a sole-proprietor you are still required to provide a response to this section. Please provide your organizational structure and your organization's capabilities to meet the City's requirements as listed in this section.

II.5 What is the fee structure for this solicitation?

5/2 W 16

Answer: You are not required to provide a fee structure or pricing for this phase of the solicitation. As Contractors are selected to be the most qualified, they will be contacted for their pricing structure and a full scope of work to be negotiated.

- II.6 How much work is anticipated for the contract?
 Answer: See Section 1.B of the Scope of Work. The City anticipates having 11 hearings in a 12-month period. The City reserves the right to order more or less of the services being solicited.
- III. Additional Information: Please see the attached additional information.
 - III.1 Pre-Response Meeting Attendance Log
 - III.2 MBE/WBE Procurement Program Solicitation Overview/Resource Guide
- IV. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Purchasing Office, (512) 974-2959

APPROVED BY

Claudia Rodriquez, Procurement Specialist IV

02/01/18

Date

ACKNOWLEDGED BY:

Name

Authorized Signature

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICIATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

6KW619



ADDENDUM PURCHASING OFFICE CITY OF AUSTIN, TEXAS

Solicitation: 7400-CRR0305 Addendum No: 2 Date of Addendum: 02/06/2018

This addendum is to incorporate the following changes to the above referenced solicitation:

Clarifications:

- 1.1 Remove Section 0900-Minority and Women Owned Business Enterprise Procurement Program, Utilization Form. No response required on this form.
- 1.2 Remove Section 0905- Minority and Women Owned Business Enterprise Procurement Program, Utilization Plan. No response required on this form.
- ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY Claudia Rodriguez, Procurement Specialist IV

Purchasing Office, (512) 974-2959

2/06/2018

ACKNOWLEDGED BY:

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICIATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



CITY OF AUSTIN, TEXAS

Purchasing Office REQUEST FOR QUALIFICATION STATEMENTS (RFQS) OFFER SHEET

SOLICITATION NO: 7400-CRR0305 COMMODITY/SERVICE DESCRIPTION: Hearing Officers

DATE ISSUED: Monday, January 22, 2018

REQUISITION NO.: 17101800041

COMMODITY CODE: 96105

FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT THE FOLLOWING AUTHORIZED CONTACT PERSON:

Claudia Rodriguez

Phone: 512-974-2959

Email: ClaudiaR.Rodriguez@austintexas.gov

PRE-RESPONSE CONFERENCE TIME AND DATE: Monday, Jan

29th, 2018 at 3:00pm-4:00pm. Conference Bridge Line: 605-472-

5663 Access Code: 398238

LOCATION: Purchasing Office Conference Room 124 W. 8th St

Austin, TX 78701, 3rd Fl.

RESPONSES <u>DUE PRIOR TO</u>: Tuesday, February 13, 2018 at

2:00pm

RESPONSE OPENING TIME AND DATE: Tuesday, February 13,

2018 at 3:00pm

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET

RM 308, AUSTIN, TEXAS 78701

LIVE SOLICITATION OPENING ONLINE: For RFQS's, only the names of respondents will be read aloud

For information on how to attend the Solicitation Closing online, please select this link:

http://www.austintexas.gov/department/bid-opening-webinars

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service	
City of Austin	City of Austin, Municipal Building	
Purchasing Office-Response Enclosed for Solicitation # 7400-CRR0305	Purchasing Office-Response Enclosed for Solicitation # 7400-CRR0305	
P.O. Box 1088	124 W 8 th Street, Rm 308	
Austin, Texas 78767-8845	Austin, Texas 78701	
	Reception Phone: (512) 974-2500	

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY (FLASH DRIVE) OF YOUR RESPONSE ***SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT***

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE		
0100	STANDARD PURCHASE DEFINITIONS		
0200	STANDARD SOLICITATION INSTRUCTIONS	*	
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*	
0400	SUPPLEMENTAL PURCHASE PROVISIONS	8	
0500	SCOPE OF WORK	4	
0600	RESPONSE PREPARATION INSTRUCTIONS & EVALUATION FACTORS	4	
0700	REFERENCE SHEET – Complete and return		
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION—Complete and return		
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION		
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION		
0815	LIVING WAGES CONTRACTOR CERTIFICATION-Complete, sign and return	1	
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1	
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable		
Attachment A	Exceptions Document	1	

^{*} Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:

http://www.austintexas.gov/financeonline/vendor connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name:	
Company Address:	
0:1 0:1 7:	
Federal Tax ID No.	
Printed Name of Officer or Authorized Representative:	
Title:	
Signature of Officer or Authorized Representative:	
Date:	
Email Address:	
Phone Number:	

* Qualifications Statement must be submitted with this signed Offer sheet to be considered for award

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

- 1. <u>CONTRACTOR'S OBLIGATIONS</u>. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
- 2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
- 3. CONTRACTOR TO PACKAGE DELIVERABLES: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- 4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
- 5. <u>TITLE & RISK OF LOSS</u>: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
- 6. <u>DELIVERY TERMS AND TRANSPORTATION CHARGES</u>: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
- 7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
- 8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
- 9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property.
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES**:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/portal/category/21287

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.
- 16. **SPECIAL TOOLS & TEST EQUIPMENT**: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. AUDITS and RECORDS:

A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

B. Records Retention:

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
- ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
- iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

18. **SUBCONTRACTORS**:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract:
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

- 20. **WARRANTY TITLE**: The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
- 21. WARRANTY DELIVERABLES: The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
- 22. **WARRANTY SERVICES**: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

- 23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
- 24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 25. **STOP WORK NOTICE**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
- 26. <u>DEFAULT</u>: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
- TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate 27. the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 29. **FRAUD**: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS**:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 32. **INSURANCE**: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. <u>Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions</u>
- 33. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

- 34. NOTICES: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
- 35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- 36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
- 37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City. Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

- 39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 40. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 47. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

48. **DISPUTE RESOLUTION**:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
- 49. <u>JURISDICTION AND VENUE</u>: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 50. **INVALIDITY**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
- 51. **HOLIDAYS:** The following holidays are observed by the City:

Holiday	<u>Date Observed</u>	
New Year's Day	January 1	
Martin Luther King, Jr.'s Birthday	Third Monday in January	
President's Day	Third Monday in February	
Memorial Day	Last Monday in May	
Independence Day	July 4	
Labor Day	First Monday in September	
Veteran's Day	November 11	

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. Americans with Disabilities Act (ADA) Compliance: No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph
 - i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS**: (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office to Claudia Rodriquez via email: ClaudiaR.RodriQuez@austintexas.gov at least 10 business days prior to the solicitation close date.

2. **ALTERNATE OFFERS:** (reference paragraph 7A in Section 0200)

Alternate Offers will be considered.

- 3. **INSURANCE:** Insurance is required for this solicitation.
 - A. <u>General Requirements</u>: See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
 - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
 - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
 - iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office P. O. Box 1088 Austin, Texas 78767

- B. <u>Specific Coverage Requirements:</u> The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
 - i. Worker's Compensation and Employers' Liability Insurance: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease each employee.

The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation in favor of the City of Austin, form WC 420304, or equivalent coverage;
- (b) 30 day Notice of Cancellation in favor of the City of Austin, form WC 420601, or equivalent coverage.

If Contractor is a **sole proprietor**, then Worker's Compensation and Employers' Liability Insurance, does not apply to you. You will prepare a letter to place on your company letterhead, sign, date, and return to Purchasing. The letter tells Purchasing that you are a sole proprietor and therefore do not need worker's compensation insurance. However, if you have any employees performing any services, this insurance is required.

- ii. <u>Commercial General Liability Insurance</u>: The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under this AGREEMENT and all contracts relative to this PROJECT.
 - (b) Independent Contractors coverage.
 - (c) CITY of Austin listed as an additional insured, endorsement CG 2010, or equivalent coverage;
 - (d) 30 day Notice of Cancellation in favor of the City of Austin, endorsement CG 0205, or equivalent coverage;
 - (e) Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404, or equivalent coverage.
- iii. Business Automobile Liability Insurance: Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation endorsement CA 0444, or equivalent coverage:
 - (b) 30 day Notice of Cancellation endorsement CA 0244, or equivalent coverage;
 - (c) Additional Insured endorsement CA 2048, or equivalent coverage.

If Contractor is a **sole proprietor using only their personal vehicle**, proof of Personal Automobile Liability Insurance may be provided in lieu of Business Auto Liability. Submit a letter on company letterhead, sign, date, and return to Purchasing with the submittal/response. The letter tells Purchasing that you are a sole proprietor using only your personal vehicle. Personal Auto Liability coverage requirements are minimum limits of \$100,000 bodily injury per person, \$300,000 bodily injury per accident, and \$100,000 property damage per accident. The policy shall also contain an Additional Interest endorsement in favor of the City of Austin.

iv. Professional Liability Insurance: The Contractor shall provide coverage, at a minimum limit of \$250,000 per claim and in aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to professional services provided under this contract. The policy shall provide for 30 day notice of cancellation in favor of the City of Austin.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

C. <u>Endorsements</u>: The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

4. TERM OF CONTRACT:

- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 24 months. The Contract may be extended beyond the initial term for up to three (3) additional 12 month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
- 5. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
- 6. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)
 - A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	See departmental purchase order (DO)
Attn	
Address	
City, State Zip Code	

B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall

factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. LIVING WAGES:

The City's Living Wage Program, Rule R161-17.14, is located at: http://www.austintexas.gov/edims/document.cfm?id=277854

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$14.00 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$14.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

8. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:

A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: http://www.ci.austin.tx.us/edims/document.cfm?id=161145

9. NON-SOLICITATION:

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 10 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 10 percent of the employee's annual compensation while employed by the Contractor.

10. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the City of Austin facilities by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the City of Austin facilities building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the

worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.

- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

11. **ECONOMIC PRICE ADJUSTMENT:**

- A. Price Adjustments: Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed 10 percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. <u>Effective Date</u>: Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. <u>Adjustments</u>: A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. <u>Indexes</u>: In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - i. The following definitions apply:
 - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) Base Price: Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.

- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%		
Database Name: Employment Cost Index		
Series ID: CIU2010000120000A (B)		
Geographical Area: United States (National)		
Description of Series ID: Total compensation f related, 12-month percent change	or Private industry workers in Professional and	
This Index shall apply to the following items of the	ne Bid Sheet / Cost Proposal: All	

E. Calculation: Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.
- 12. <u>INTERLOCAL PURCHASING AGREEMENTS</u>: (applicable to competitively procured goods/services contracts).
 - A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
 - B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
- 13. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
 - A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the

entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

- B. Copyrights: As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
- C. Additional Assignments: The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.
- 14. **CONTRACT MANAGER**: The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Purchasing Office: Yolanda Miller (512) 974-2033

Small & Minority Business Resource Department: Edward Campos (512) 974-7206

Capital Contracting Office: Aiden Cohen (512) 974-1929

Neighborhood Housing and Community Development: Alan Fish (512) 974-3188

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

I. PURPOSE

- A. This City of Austin, herein referred to as the "City", seeks qualification statements in response to this Request for Qualification Statements (RFQS) from qualified individuals or firms to provide hearing officer services. The Successful Respondents ("Contractors") shall provide these services on an as-needed basis. This RFQS is being solicited in order to establish contracts with multiple qualified Contractors (persons or firms) to conduct administrative hearings which may include, but is not limited to the following areas (categories):
 - Protests of procurements processes, solicitations, or of award recommendations, or of disqualifications resulting from the City's Anti-Lobbying Ordinance;
 - Protests of procurements or solicitations for Austin Housing Finance Corporation (AHFC);
 - Protests and appeals related to the City's Minority-Owned and Women-Owned Business Enterprise (MBE/WBE) Procurement Program which may be related to certification, de-certification, or compliance to the program; and
 - Hearings required by City Code, Title 5, Chapter 5-1, Housing Discrimination
- B. The City reserves the right to make multiple awards based on each type of hearing subject area listed above. Respondents will be evaluated based on their specific experience in each category. The City may elect to award multiple contracts per category to individuals and/or firms to serve as hearing officers for an annual contract amount not to exceed \$30,000 each and combined. The City estimates 11 hearings in a 12 month period. There is no guarantee of a minimum number of hearings to be conducted by any Contractor or firm retained to provide these services.
- C. The full extent of the scope of services to be provided and the actual fees for the services will be negotiated between the City and each qualified Contractor selected for contract award by the City.

II. BACKGROUND

- A. The City's procurement activities include operations conducted by the Purchasing Office, AHFC, Capital Contracting Office (CCO), and the Small and Minority Business Resources (SMBR) Department. The City's various administrative procedures allow for different types of protests and generally, the use of hearing officers to assist in the protest process. These various protest processes may use an external hearing officer to review information presented by the protester and the City. The hearing officer conducts the hearing and produces a written recommendation to the appropriate procurement officer or NHCD Director or designee. Any recommendations must be consistent with the City's policies. The Authorized Officer, AHFC Treasurer or Department Director uses the hearing reports in deciding the final outcome of the protests.
- B. Austin Housing Finance Corporation (AHFC)
 - The Austin Housing Finance Corporation (AHFC) was created in 1979 as a
 public, nonprofit corporation and instrumentality of the City under the provisions
 of the Texas Housing Finance Corporation Act, Chapter 394, and Local
 Government Code. The mission of the AHFC is to generate and implement

strategic housing solutions for the benefit of low- and moderate- income residents of the City of Austin. The AHFC's primary functions are to:

- Issue single-family and multi-family bonds for the financing of reasonably priced housing
- Assist the City in the delivery of reasonably priced housing programs using HOME Investment Partnerships (HOME) and Community Development Block Grant (CDBG) funds granted to the City by the U.S. Department of Housing and Urban Development (HUD)

C. Equal Employment/Fair Housing

- The City's Equal Opportunity and Fair Housing Office has responsibility for the City's Housing Ordinance and the Fair Housing Act to protect individuals in the area of housing (terms and conditions, rental, leasing, buying or selling) based on race, sex, religion, national origin, familial status, and physical or mental disability. The ordinance also protects an individual from discrimination based on age (18 years or older), status as a student, sexual orientation, gender identity, and marital status.
- Hearings officers shall review information presented by individuals asserting a violation of the ordinance or the act. The hearing officer shall conduct the hearing and provide a fact-finding report.
- More information about the Equal Opportunity and Fair Housing Office is available on the City's internet pages: http://austintexas.gov/department/equal-employment-and-fair-housing-office and http://austintexas.gov/department/housing-discrimination

III. HEARINGS OFFICER QUALIFICATIONS

- A. To be considered for award, the Contractor shall have experience in legal or policy analysis and analytical or legal report writing.
- B. Contractor shall demonstrate required experience through a resume, letters of reference, certifications and education/training transcripts. One of the following minimum qualifications is also required.
 - Active license to practice law and five years licensure; or
 - Mediator who had attended a 40-hour mediation class and performed 25 mediations in the last five years; or
 - Procurement professional with experience in conducting actual administrative grievance hearings within the previous five years;
 - For the AHFC hearing officer, knowledge of Texas Housing Finance Corporation Act and other AHFC-related rules and policies;
 - And, for the fair housing hearing officer, knowledge of both municipal and federal fair housing laws for fair housing hearings.

IV. SCOPE OF SERVICES

Contractors shall perform all duties required of the hearing officer as negotiated, which may include, but is not limited to the following:

The Contractor Shall:

- A. Attend the City's required Hearings Officer training.
- B. Have flexible schedules during Monday Friday, and during normal business hours in order to comply with grievance deadlines.
- C. Travel to various City facilities where the hearings may be held.
- D. Produce a written report in the most current version of Microsoft Word, which summarizes the available information, makes findings of fact and, upon request, makes a recommendation to uphold, overturn or modify the response to the protest consistent with the City's policy.
 - E. Accept hearing assignment within one business day of being notified by authorized users of the contract. Acceptance shall be to the City, via email. If unavailable for the hearing, the Contractor shall notify the requestor in writing within one business day of the City's request for services.
 - F. Prepare for each hearing and attend any necessary pre-hearing determinations. The City will provide information pertaining to the protest as soon as practical.
 - G. Conduct hearings in a manner consistent with the guidelines negotiated by each requesting business unit.
 - H. Produce a written fact-finding report that conforms to the format required by the requesting business unit that is free of errors and irrelevant opinions. Information on the required document format will be provided at the City provided Hearing Office training.
 - I. Submit the report and executive summary electronically to the requestor that is free of errors and irrelevant opinions.
 - J. Complete and deliver the report to the requestor within the mutually agreed upon timeframe.
 - K. As required, provide clarifications of the report's content. Submit mutually agreed upon corrections or meet with the requestor to discuss requested changes within three business days of written notification from the City.
 - L. Ensure the report is consistent with the City's policies by conferring with the requestor when necessary.

- M. Confer with the Purchasing Office, AHFC, CCO, SMBR, or NHCD to interpret related policies, City Charter language and use that interpretation when completing the report.
- N. Comply with all relevant procedures including those used for obtaining information outside of the hearing process.
- O. The hearing officer must disclose any personal, business, or legal relationship with a grievant, the responding department, the representative of either, any witness, or any other party of interest. In case of a conflict, the hearing officer must recuse himself/herself as a hearing officer for that specific protest.
- P. If a hearing is cancelled (by anyone other than the hearing officer) less than 24 hours before the mutually agreed upon (scheduled) hearing time, the hearing officer will be entitled to a negotiated fee.

V. CITY RESPONSIBILITIES

- A. The City will provide the meeting space for all hearings and related meetings to this scope of work.
- B. The City will ensure that hearing related materials are provided to the Contractor within a mutually agreeable timeframe prior to the hearing.
- C. The City will coordinate any recordings and will send out all required hearing notices to all required attendees.

CITY OF AUSTIN PURCHASING OFFICE

QUALIFICATIONS STATEMENT PREPARATION INSTRUCTIONS AND EVALUATION FACTORS SECTION 0600

SOLICITATION NUMBER: RFQS 7400 CRR0305 HEARING OFFICERS

SECTION 1. QUALIFICATION STATEMENT RESPONSE FORMAT

Submit one (1) original and (1) flash drive that contains an exact electronic replica of the Response. The original Response shall be clearly labeled as "original" and contain original ink signatures by a person authorized to sign on behalf of the Offeror. The Response shall be submitted on standard 8.5 x 11 inch paper and shall be organized in the following format and information sequence. Use tabs to divide each part of your Response and include a Table of Contents. Respondents shall provide all details in the Response as required and any additional information you deem necessary to evaluate your Response.

Prefacing the qualification statement response, the Respondent shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the qualifications. The Response itself shall be organized in the following format and informational sequence:

<u>Tab 1 – City Required Documents</u>: Include with your response all documents as required by the solicitation:

- 1. Signed Offer Sheet
- 2. Qualification Statement-Including Writing Sample
- 3. Section 0700-Reference Sheet
- 4. Section 0800-Non-Discrimination and Non-Retaliation Certification
- 5. Section 0815-Living Wages Contractor Certification
- 6. Section 0900-Subcontracting/Sub-Consulting Utilization Form
- 7. Section 0905-Subcontracting/Sub-Consulting Utilization Plan-if applicable
- 8. Attachment A-Exceptions Document
- <u>Tab 2 Authorized Negotiator and Business Organization</u>: Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters. State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- <u>Tab 3 Project Approach</u>: Define in detail your overall understanding of each requirement presented in the Scope of Services of this RFQS and your method of addressing the work required. Provide all details as required in the Scope of Services and any additional information you deem necessary to evaluate your response. Also include a statement of compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Respondent must state their compliance with terms of this Request for Qualifications and may use the Exhibit A-Exceptions Document.
- <u>Tab 4 Writing Sample</u>: Provide a writing sample demonstrating experience in legal or policy analysis and analytical or legal report writing.
- <u>Tab 5 Project Management Structure & Personnel</u>: Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor. Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of

CITY OF AUSTIN PURCHASING OFFICE

QUALIFICATIONS STATEMENT PREPARATION INSTRUCTIONS AND EVALUATION FACTORS SECTION 0600

SOLICITATION NUMBER: RFQS 7400 CRR0305 HEARING OFFICERS

time each person will devote to this work. Identify key persons by name and title. Provide all resumes.

<u>Tab 6 - Prior Experience</u>: Provide a narrative on relevant project experience, specifically including work similar to that required in this solicitation. Describe only relevant corporate or government related experience. Also provide detailed experience for personnel who will be actively /directly assigned to the resulting contract. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 2003. Supply the project title, year, and reference name, title, present address, and phone number of principal person for whom prior projects were accomplished. You may include the same references on the City required document Section 0700-Reference Sheet. The City reserves the right to contact any reference listed in the response.

SECTION 2

A. Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:

- i. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2-7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- ii. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- iii. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- iv. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance The text of the City Ordinance is posted on the Internet at: http://www.ci.austin.tx.us/edims/document.cfm?id=161145
- B. <u>Proposal Acceptance Period</u>: All proposals are valid for a period of one hundred and twenty (120) calendar days subsequent to the solicitation closing date unless a longer acceptance period is offered in the proposal.
- C. <u>Proprietary Information</u>: All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

CITY OF AUSTIN PURCHASING OFFICE

QUALIFICATIONS STATEMENT PREPARATION INSTRUCTIONS AND EVALUATION FACTORS SECTION 0600

SOLICITATION NUMBER: RFQS 7400 CRR0305 HEARING OFFICERS

- D. **Exceptions**: Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal. Please use the Exception Form, Attachment A to document any exceptions to be taken.
- E. <u>Response Preparation Costs</u>: All costs directly or indirectly related to preparation of a response to the RFQS or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Respondent.

SECTION 3: EVALUATION FACTORS AND AWARD

A. <u>Competitive Selection</u>: This procurement will comply with applicable City Policy. The successful Respondents will be selected by the City on a rational basis. Evaluation factors outlined below shall be applied to all eligible, responsive Respondents in comparing responses and selecting the successful Respondent(s). Award of a Contract may be made without discussion with Respondents after responses are received. Responses should, therefore, be submitted on the most favorable terms.

B. Evaluation Factors:

i. Total 100 points.

(1) Demonstrated Applicable Experience (50 POINTS)

Including, but not limited to:

- i. Service provider's demonstrated experience as a hearing officer, judge, master or equivalent.
- ii. Service provider's demonstrated experience as an attorney.
- iii. Service provider's demonstrated experience as a trained mediator.
- iv. Service provider's demonstrated experience as a procurement professional experienced in protests and other administrative procedures.
- v. Service provider's demonstrated experience in any other relevant area.

(2) Personnel Qualifications (25 POINTS)

i. Experience and related education as per the scope of work, especially experience in government procurement and housing industry related matters.

(3) Project Approach (15 POINTS)

i. Respondent should demonstrate clear understanding of the requirements of the solicitation and identify their concept of the program, and plan to accomplish.

(4) Writing Samples (10 POINTS)

- i. Include a cover page with context and how the writing sample demonstrates you/your firm's experience in legal or policy analysis and analytical or legal report writing.
- C. Presentations, Demonstrations Optional. The City will score proposals on the basis of the criteria listed above. The City may select a "short list" of Proposers based on those scores. "Short-listed" Proposers may be invited for presentations, or demonstrations with the City. The City reserves the right to re-score "short-listed" proposals as a result, and to make award recommendations on that basis.

Section 0700: Reference Sheet

Re	sponding Company Name	_	
an sh cu	d ability to provide the pro all furnish at least 3 comp	ducts and/or services des ete and verifiable referen or has provided the same	er to determine the Offeror's experience scribed in this Solicitation. The Offeror ces. References shall consist of or similar services within the last 5 year formance.
1.	Company's Name Name and Title of Contact Project Name Present Address		
	City, State, Zip Code		
	Telephone Number	()	Fax Number ()
	Email Address		
2.	Company's Name		
	Name and Title of Contact		
	Project Name		
	Present Address		
	City, State, Zip Code		
	Telephone Number	()	Fax Number ()
	Email Address		
3.	Company's Name		
	Name and Title of Contact		
	Project Name		

Present Address

City, State, Zip Code

Telephone Number

Email Address

(____)_____Fax Number (____)____

City of Austin, Texas Section 0800 NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this	day of	,	
		CONTRACTOR	
		Authorized Signature	
		Title	

Section 0815: Living Wages Contractor Certification

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$14.00 per hour.

(1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$14.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$14.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$14.00 per hour.

ntractor's Name:	
nature of Officer or thorized presentative:	
nted Name:	
e	
thorized presentative: nted Name:	



MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: Hearing Officers	
SOLICITATION TITLE: RFQS 7400-CRR0305	

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions. b.)Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include** the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.
 - NO, I DO NOT intend to use Subcontractors/Sub-consultants.

 Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.
 - YES, I DO intend to use Subcontractors /Sub-consultants.

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms. Offeror Information					
Company Name					
City Vendor ID Code					
Physical Address					
City, State Zip					
Phone Number				Email Address	
Is the Offeror	□NO				
City of Austin M/WBE					
certified?	☐ YES	Indicate one:	MBE WB	E 🔲 MBE/WBE J	oint Venture
Offeror Certification: I und	erstand that even	though SMBR did 1	not assign subcon	tract goals to this Soli	icitation, I will comply with the City's M/WB
Procurement Program if I is	ntend to include	Subcontractors in	my Offer. I furt	her agree that this c	completed Subcontracting/Sub-Consulting
Utilization Form, and if app	plicable my comp	oleted Subcontracti	ing/Sub-Consul	ting Utilization Pla	an, shall become a part of any Contract I ma
be awarded as the result of	this Solicitation.	Further, if I am a	warded a Contra	act and I am not us	sing Subcontractor(s) but later intend to ac
Subcontractor(s), before the	Subcontractor(s)	is hired or begins v	work, I will comp	ly with the City's M	/WBE Procurement Program and submit the
Request For Change form	to add any Subc	contractor(s) to the	Project Manager	or the Contract Man	nager for prior authorization by the City ar
perform Good Faith Effort	s (GFE), if appl	icable. I understan	d that, if a Subc	ontractor is not list	ed in my Subcontracting/Sub-Consulting
Utilization Plan, it is a viola	tion of the City's	M/WBE Procuren	nent Program for	me to hire the Subco	contractor or allow the Subcontractor to beg
work, unless I first obtain	City approval	of my Request f	or Change for	n. I understand tha	at, if a Subcontractor is not listed in n
Subcontracting/Sub-Cons	ulting Utilizatio	n Plan, it is a viola	tion of the City's	M/WBE Procureme	ent Program for me to hire the Subcontracte
or allow the Subcontractor to begin work, unless I first obtain City approval of my Request for Change form.					
Name and Title of Authorize	d Representative	(Print or Type)	Signature/	Date	

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

_		
		CITATION NUMBER: Hearing Officers CITATION TITLE: RFQS 7400-CRR0305
<u>L</u>		
	retain	RUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when ing Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR I-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.
	I inte	end to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).
	974-7 certif Subce	uctions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin fied M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's ontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) the table below and must include the following documents in their sealed Offer:
		Subcontracting/Sub-Consulting Utilization Form (completed and signed) Subcontracting/Sub-Consulting Utilization Plan (completed)
	I into	end to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.
		ructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first onstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.
	STEI STEI the fo	P ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract; P TWO: Perform Good Faith Efforts (Check List provided below); P THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include following documents in their sealed Offer: Subcontracting/Sub-Consulting Utilization Form (completed and signed) Subcontracting/Sub-Consulting Utilization Plan (completed) All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)
	GOO	DD FAITH EFFORTS CHECK LIST –
	in or	n using NON-CERTIFIED Subcontractor/Sub-consultants(s), <u>ALL</u> of the following CHECK BOXES <u>MUST</u> be completed der to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed r. Documentation CANNOT be added or changed after submission of the bid.
		Contact SMBR. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
		Contact M/WBE firms. Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

CITATION NUMBER: Hearing Officers CITATION TITLE: RFQS 7400-CRR0305
Follow up with responding M/WBE firms. Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
Advertise . Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
Use a Community Organization. Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan

SOLICITATION NUMBER: H SOLICITATION TITLE: RFQS			
		page to add additional Subco	ntractors as needed)
Oncio	is may dupileate tins p	Subcontractor/Sub-consulta	
City of Austin Certified	☐ MBE ☐ WBE I	Ethnic/Gender Code:	□ NON-CERTIFIED
Vendor ID Code	I MDE I WDE I	Juline, Gender Gode.	
Contact Person		Phon	e Number:
Additional Contact Info	Fax Number:	E-mail:	e i valibel.
Amount of Subcontract	\$	13 111411.	
List commodity codes &	Ÿ		
description of services			
Justification for not utilizing a			
certified MBE/WBE			
		Subcontractor/Sub-consulta	
City of Austin Certified	☐ MBE ☐ WBE I	Ethnic/Gender Code:	☐ NON-CERTIFIED
Vendor ID Code			
Contact Person		Phon	e Number:
Additional Contact Info	Fax Number:	E-mail:	
Amount of Subcontract	\$		
List commodity codes &			
description of services			
Justification for not utilizing a			
certified MBE/WBE			
certified HDE/ WBE			
		SMBR Contact Information	
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		Phone	
		OR	
		☐ Email	
	·		
FOR SMALL A	AND MINORITY BU	JSINESS RESOURCES DE	PARTMENT USE ONLY:
Having reviewed this plan, I	acknowledge that	the Offeror HAS	or HAS NOT complied with these
nstructions and City Code Ch	~		
notice desire and stey some si	mpters = 711, 2, 3,	o, ao amenada.	
Reviewing Counselor		Date	
ceviewing Counselor		Date	
have reviewed the completi	no the Subcontracti	no/Sub-Consultant Utiliza	ation Plan and Concur Do Not
	~	~	ation Than and Solicar Bo 140t
Concur with the Reviewing C	ounseloi s recomme	Aldauon.	
Director/Assistant Director o	r Decimes	Date	
Director/ Assistant Director of	1 Designee	Date	



City of Austin FSD Purchasing Office **Certificate of Exemption**

DATE:

01/03/2018

DEPT:

Financial Services

TO:

Purchasing Officer or Designee

FROM:

Purchasing Office

BUYER: Claudia Rodriquez

PHONE: (512) 974-2959

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

- The undersigned is authorized to submit this certification.
- 2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
- a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- a procurement necessary to preserve or protect the public health or safety of municipality's residents
- o a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- a procurement for personal, professional, or planning services
- a procurement for work that is performed and paid for by the day as the work progresses
- O a purchase of land or right-of- way
- O a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

- equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials: and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- a purchase of rare books, papers, and other library materials for a public library
- n paving, drainage, street widening and other public improvements, or related matters, if at least one- third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- a public improvement project, already in progress, authorized by voters of the municipality. for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- O personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
- cooperative purchasing administered by a regional planning commission established under Chapter 391
- O services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- O electricity
- O advertising, other than legal notices
- O Critical Business Need (Austin Energy Only)
- 3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.
 - Preserve and Protect the Public Health and Safety Describe how this purchase will preserve and protect the public safety of residents.
 - Sole Source Describe what patents, copyrights, secret processes, or natural
 monopolies exist. Attach a letter from vendor supporting the sole source. The
 letter must be on company letterhead and be signed by an authorized person in
 company management.
 - Personal Services Describe those services to be performed personally by the individual contracted to perform them.
 - Professional Services Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
 - Planning Services Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
 - Critical Business Need Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Financial Services (Purchasing and CCO), SMBR, and NHCD require services of independent hearing officers to conduct and preside over protest hearings for each department. The protest process is occasionally required for each department's processes related to procurement or housing. Hearings Officers are required to have experience with statutes, city charter, and other related programs that govern how these departments conduct business.

- 4. Please attach any documentation that supports this exemption.
- 5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

This Certificate of Exemption is filed in order to use the Request for Qualifications Statement (RFQS) solicitation method. Hearings officers are being solicited under the RFQS method because of their legal background, affiliations, or certifications. The City intends to establish a pool of multiple hearings officers in order to ensure availability for various department's use. The resulting contract shall be for an initial term of 2 years with 3, 12 month options with each year for \$30,000. Actual funding shall be provided by each department: SMBR, CCO, Purchasing, and NHCD.

	nacts and documentation support the requested exemption, the City of ontract with various Hearings Officers
	roximately \$150,000.00 (Provide estimate and/or breakdown of cost)
Recommended	
Certification	Originator Date
Approved Certification	Department Director or designee Date
	Assistant City Manager / General Manager Date or designee (if applicable)
Purchasing Review (if applicable)	Maudia Raduquez 1-10-18 Buyer Date Manager Initials
Exemption Authorized (if applicable)	Purchasing Officer or designee Date

02/26/2013